

EXHIBIT 66

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:)
) CHAPTER 11
HIGHLAND CAPITAL)
MANAGEMENT, L.P.,) CASE NO. 19-34054-SGJ11
)
Reorganized Debtor.)
)
HIGHLAND CAPITAL)
MANAGEMENT, L.P.,)
)
Plaintiff,) ADVERSARY PROCEEDING
VS.) NO. 21-03000-SGJ
)
HIGHLAND CAPITAL)
MANAGEMENT FUND ADVISORS,)
L.P., NEXPOINT ADVISORS,)
L.P., HIGHLAND INCOME)
FUND, NEXPOINT STRATEGIC)
OPPORTUNITIES FUND,)
NEXPOINT CAPITAL, INC.,)
AND CLO HOLDCO, LTD.,)
)
Defendants.)

REMOTE ORAL DEPOSITION OF

MARK PATRICK

Dallas, Texas

Tuesday, August 2, 2022

REPORTED BY:

JANICE K. McMORAN, CSR, RDR, CRR, TCRR

JOB NO. 214839

<p>Page 2</p> <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6 Tuesday, August 2, 2022</p> <p>7 8:02 a.m. CST</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14 REMOTE ORAL DEPOSITION OF MARK PATRICK,</p> <p>15 produced as a witness remotely via Zoom</p> <p>16 videoconference at the instance of the Reorganized</p> <p>17 Debtor/Plaintiff, and duly remotely sworn, was</p> <p>18 taken in the above-styled and -numbered cause on</p> <p>19 the 2nd of August, 2022, from 8:02 a.m. until 10:24</p> <p>20 a.m., before Janice K. McMoran, RDR, CRR, TCRR, and</p> <p>21 Certified Shorthand Reporter in and for the State</p> <p>22 of Texas, reported stenographically, with the</p> <p>23 witness appearing remotely from Dallas, Texas,</p> <p>24 pursuant to the Federal Rules of Civil Procedure.</p> <p>25</p>	<p>Page 3</p> <p>1 A P P E A R A N C E S</p> <p>2</p> <p>3 APPEARING FOR THE REORGANIZED DEBTOR/PLAINTIFF:</p> <p>4 HAYLEY WINOGRAD, ESQ.</p> <p>5 JOHN MORRIS, ESQ.</p> <p>6 Pachulski Stang Ziehl & Jones LLP</p> <p>7 780 Third Avenue</p> <p>8 New York, New York 10017</p> <p>9</p> <p>10 APPEARING FOR NEXPOINT REAL ESTATE PARTNERS, LLC:</p> <p>11 CHARLES GAMEROS, JR., ESQ.</p> <p>12 Hoge & Gameros LLP</p> <p>13 6116 North Central Expressway</p> <p>14 Dallas, Texas 75206</p> <p>15</p> <p>16 APPEARING FOR THE WITNESS:</p> <p>17 DEBRA DANDENEAU, ESQ.</p> <p>18 Baker & McKenzie LLP</p> <p>19 452 Fifth Avenue</p> <p>20 New York, New York 10018</p> <p>21</p> <p>22 ALSO PRESENT:</p> <p>23 La Asia Cantey -</p> <p>24 Pachulski Stang Ziehl & Jones LLP</p> <p>25 Louis M. Phillips</p>
<p>Page 4</p> <p>1 I N D E X</p> <p>2</p> <p>3</p> <p>4 PAGE</p> <p>5 Appearances.....3</p> <p>6 Proceedings.....6</p> <p>7 WITNESS: MARK PATRICK</p> <p>8 Examination by Ms. Winograd.....8</p> <p>9 Reporter's Certificate.....110</p> <p>10 Acknowledgment of Deponent.....113</p> <p>11 Errata.....114</p> <p>12</p> <p>13</p> <p>14 EXHIBIT INDEX</p> <p>15 EXHIBIT</p> <p>16 NUMBER DESCRIPTION IDENTIFIED</p> <p>17 EXHIBIT 2 - Limited Liability Company</p> <p>18 Agreement of SE Multifamily</p> <p>19 Holdings LLC dated as of</p> <p>20 August 23, 2018.....16</p> <p>21</p> <p>22 EXHIBIT 4 - First Amended and Restated</p> <p>23 Limited Liability Company</p> <p>24 Agreement dated as of March 15,</p> <p>25 2019 to be effective as of</p> <p>August 23, 2018.....44</p> <p>EXHIBIT 5 - Proof of Claim for HCRE Partner,</p> <p>LLC dated 4/8/2020.....102-103</p> <p>EXHIBIT 12- E-mail from Mark Patrick dated</p> <p>28 Feb 2019 with attachments</p> <p>(D-HCRE-143930 - D-HCRE-143984)...73</p>	<p>Page 5</p> <p>1 EXHIBIT INDEX (CONTINUED)</p> <p>2</p> <p>3 EXHIBIT</p> <p>4 NUMBER DESCRIPTION IDENTIFIED</p> <p>5 EXHIBIT 15- E-mail chain dated February 28,</p> <p>6 2019 - March 4, 2019; Subject:</p> <p>7 RE: Multifamily Holdings LLC</p> <p>8 Amended and Restated Agreement</p> <p>9 (D-HCRE-107089 - D-HCRE-107091)...60</p> <p>10 EXHIBIT 18- E-mail from Mark Patrick to</p> <p>11 Paul Broaddus dated March 8,</p> <p>12 2020; Subject: Unicorn - LLC</p> <p>13 Agreement (D-HCRE-183922 -</p> <p>14 D-HCRE-183949).....54-55</p> <p>15 EXHIBIT 28- E-mail dated 3/16/19 with</p> <p>16 attached First Amended and</p> <p>17 Restated Limited Liability</p> <p>18 Agreement of SE Multifamily</p> <p>19 Holdings LLC (BH0001236 -</p> <p>20 BH0001266).....99</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

<p style="text-align: right;">Page 6</p> <p>1 M. PATRICK 2 PROCEEDINGS 3 THE REPORTER: We are on the record. 4 Today's date is August 2nd, 2022, and the 5 time is 8:02 a.m. Central. 6 This is the oral deposition of Mark 7 Patrick, and it is being conducted 8 remotely. 9 The witness is located in Dallas, 10 Texas. 11 My name is Janice McMoran, Texas 12 CSR No. 1959. I am administering the oath 13 and reporting the deposition remotely by 14 stenographic means from my residence in 15 Granbury, Texas, on behalf of TSG 16 Reporting. 17 Would counsel please state their 18 appearances and locations for the record? 19 MS. WINOGRAD: My name is Hayley 20 Winograd. I'm at the firm of Pachulski 21 Stang Ziehl & Jones, LLP. I represent 22 Highland Capital Management, L.P., and I'm 23 located in New York City. 24 MS. DANDENEAU: My name is Debra 25 Dandeneau. I'm representing Mark Patrick.</p>	<p style="text-align: right;">Page 7</p> <p>1 M. PATRICK 2 I'm from the firm of Baker McKenzie, and 3 I'm currently located in New York City. 4 MR. GAMEROS: Bill Gameros for 5 NexPoint Real Estate Partners. I am 6 currently located in Dallas, Texas. 7 MR. MORRIS: This is John Morris from 8 Pachulski Stang Ziehl & Jones. I'm 9 second-chairing Ms. Winograd today. 10 THE REPORTER: Okay. At this time, 11 would counsel agree to allow me to swear 12 in the witness remotely? 13 MS. WINOGRAD: Yes. 14 MS. DANDENEAU: Yes. 15 (Witness sworn.) 16 MS. DANDENEAU: Ms. Winograd, as I 17 mentioned to Mr. Morris, I'd like to make 18 a brief statement before this deposition 19 starts. As I believe your firm knows from 20 prior depositions, even though Mr. Patrick 21 is qualified as a lawyer, Mr. Patrick did 22 not practice as a lawyer or give legal 23 advice during his tenure at Highland 24 Capital. 25 So that said, Ms. Winograd, you're</p>
<p style="text-align: right;">Page 8</p> <p>1 M. PATRICK 2 here as the representative of his former 3 employee, and during the deposition, if 4 any questions arise that might be 5 considered privileged, attorney-client 6 privileged, we would rely upon you to 7 assert whatever privilege that Highland 8 believes is applicable. 9 So thank you. I just wanted to make 10 that clear from the outset. 11 MS. WINOGRAD: Thank you. 12 MARK PATRICK, 13 having been first duly remotely sworn, 14 testified as follows: 15 EXAMINATION 16 BY MS. WINOGRAD: 17 Q. Good morning, Mr. Patrick. Can you 18 hear me? 19 A. Yes, I can. 20 Q. Okay. My name is Hayley Winograd. 21 I'm an attorney at Pachulski Stang Ziehl & 22 Jones. We are counsel to the reorganized 23 debtor known as Highland Capital Management, 24 L.P., and I'll be taking your deposition today. 25 Do you understand that?</p>	<p style="text-align: right;">Page 9</p> <p>1 M. PATRICK 2 A. Yes, I do. 3 Q. Can we refer to Highland Capital 4 Management, L.P. as Highland going forward? 5 A. Yes. 6 Q. I will be putting up documents from 7 time to time on the screen, and if you need to 8 see any other portion of the document in order 9 to give a complete answer, will you please let 10 me know? 11 A. Yes, I will. 12 Q. And if you need me to repeat a 13 question, will you please let me know? 14 A. Yes, I will. 15 Q. And if you don't understand a 16 question, will you please let me know? 17 A. Yes, I will. 18 Q. Okay. Please allow me to finish my 19 questions before you start to answer. Is that 20 fair? 21 A. Yes. 22 Q. Okay. And I will wait for you to 23 finish your answer before I ask another 24 question. And if I start asking you a question 25 before you're done answering, will you please</p>

<p>Page 10</p> <p>1 M. PATRICK</p> <p>2 let me know?</p> <p>3 A. I will.</p> <p>4 Q. Okay. And do you understand that</p> <p>5 everything you say during today's deposition is</p> <p>6 under oath?</p> <p>7 A. Yes, I do.</p> <p>8 Q. Okay. And if you need to take a</p> <p>9 break to use the restroom, let me know. But if</p> <p>10 we do, it just can't be in the middle of a</p> <p>11 question. Is that fair?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. Did you do anything to prepare</p> <p>14 for this deposition?</p> <p>15 A. Yes.</p> <p>16 Q. What did you do to prepare?</p> <p>17 A. I met with the law firm of Baker</p> <p>18 McKenzie and spoke to Debra Dandeneau.</p> <p>19 Q. Okay. Did you review any documents?</p> <p>20 A. Yes, I did.</p> <p>21 Q. What documents did you review?</p> <p>22 A. I reviewed my prior deposition</p> <p>23 testimony with respect to the Wick Phillips</p> <p>24 disqualification and the related exhibits.</p> <p>25 Q. Did you -- other than your lawyers,</p>	<p>Page 11</p> <p>1 M. PATRICK</p> <p>2 did you speak to anybody else to prepare for</p> <p>3 this deposition?</p> <p>4 A. No.</p> <p>5 Q. Okay. Mr. Patrick, are you currently</p> <p>6 employed?</p> <p>7 A. Yes, I am.</p> <p>8 Q. Where are you employed?</p> <p>9 A. In Dallas, Texas.</p> <p>10 Q. Can you tell me the name of the</p> <p>11 company you're employed by?</p> <p>12 A. Yes. Skyview Group, I believe, is</p> <p>13 the name.</p> <p>14 Q. Okay. And when did you become</p> <p>15 employed by Skyview Group?</p> <p>16 A. In March of 2021.</p> <p>17 Q. Okay. And who was your employer</p> <p>18 before Skyview?</p> <p>19 A. Highland.</p> <p>20 Q. Okay. How long were you employed by</p> <p>21 Highland?</p> <p>22 A. A little over ten years, I believe.</p> <p>23 Q. Okay. And what was your role at</p> <p>24 Highland?</p> <p>25 A. I worked in the tax department,</p>
<p>Page 12</p> <p>1 M. PATRICK</p> <p>2 and -- and I helped facilitate any tax issues</p> <p>3 that -- and address tax issues that may arise</p> <p>4 from time to time, as well as doing a variety</p> <p>5 of tax planning.</p> <p>6 Q. Okay. Were there any other people</p> <p>7 who worked in that department with you?</p> <p>8 A. Yes.</p> <p>9 Q. Who were they?</p> <p>10 A. Well, personnel changed from time to</p> <p>11 time, but at the end of my employment, I</p> <p>12 believe Rick Swadley, he is our chief</p> <p>13 compliance officer of tax, chief tax compliance</p> <p>14 officer. Paul Broaddus was also in the tax</p> <p>15 department as a senior tax manager. I'm not</p> <p>16 exactly sure the status of the other folks as</p> <p>17 far as who else was there at the time that I</p> <p>18 left, because there were people kind of coming</p> <p>19 and going from time to time. So I might be</p> <p>20 mistaken.</p> <p>21 Q. Okay.</p> <p>22 A. But I believe there were at least two</p> <p>23 other tax professionals at the time of my</p> <p>24 termination from Highland.</p> <p>25 Q. While you were employed at Highland,</p>	<p>Page 13</p> <p>1 M. PATRICK</p> <p>2 did you ever perform any services for any</p> <p>3 affiliates of Highland?</p> <p>4 MS. DANDENEAU: Objection to form.</p> <p>5 A. I'll take a -- I guess a broad</p> <p>6 definition of affiliates and say yes.</p> <p>7 BY MS. WINOGRAD:</p> <p>8 Q. Okay. What's your definition of</p> <p>9 affiliates?</p> <p>10 A. I guess any -- any entity that might</p> <p>11 have either a relationship or ownership with</p> <p>12 Highland.</p> <p>13 Q. So while you were employed at</p> <p>14 Highland, were you ever involved in any</p> <p>15 projects undertaken by affiliates of Highland?</p> <p>16 A. Involved in --</p> <p>17 MS. DANDENEAU: Objection to form.</p> <p>18 BY MS. WINOGRAD:</p> <p>19 Q. Any projects undertaken by affiliates</p> <p>20 of Highland.</p> <p>21 A. Yeah, I apologize. I'm missing the</p> <p>22 second word of your question.</p> <p>23 Q. While you were employed by Highland,</p> <p>24 were you ever involved in any projects</p> <p>25 undertaken by those affiliates?</p>

<p style="text-align: right;">Page 14</p> <p>1 M. PATRICK</p> <p>2 A. Oh, oh, undertaken. Excuse me. That</p> <p>3 was the word that was tripping me up. I</p> <p>4 apologize. Yes.</p> <p>5 Q. Is it fair to say that while you were</p> <p>6 employed at Highland, you performed services</p> <p>7 for entities owned and controlled by James</p> <p>8 Dondero?</p> <p>9 MS. DANDENEAU: Objection to form.</p> <p>10 A. Yes.</p> <p>11 BY MS. WINOGRAD:</p> <p>12 Q. Okay. Have you heard of the term</p> <p>13 Project Unicorn?</p> <p>14 A. Yes.</p> <p>15 Q. Are you familiar with the term</p> <p>16 Project Unicorn?</p> <p>17 A. Yes.</p> <p>18 Q. Do you have an understanding of what</p> <p>19 Project Unicorn is?</p> <p>20 A. Yes.</p> <p>21 Q. What is your understanding of Project</p> <p>22 Unicorn?</p> <p>23 A. It was a special purpose vehicle</p> <p>24 organized to acquire certain real estate</p> <p>25 assets.</p>	<p style="text-align: right;">Page 15</p> <p>1 M. PATRICK</p> <p>2 Q. Okay. So is it fair to say the</p> <p>3 purpose of Project Unicorn was to acquire</p> <p>4 certain real estate assets?</p> <p>5 A. Yes.</p> <p>6 Q. Did you play a role in any aspect of</p> <p>7 Project Unicorn?</p> <p>8 A. Yes, I did.</p> <p>9 Q. What role did you play?</p> <p>10 A. I helped coordinate and facilitate</p> <p>11 the underlying LLC agreement with respect to</p> <p>12 Project Unicorn.</p> <p>13 Q. Highland was involved in Project</p> <p>14 Unicorn, right?</p> <p>15 A. Who?</p> <p>16 Q. Highland.</p> <p>17 A. That is correct.</p> <p>18 Q. Do you know why Highland was involved</p> <p>19 in Project Unicorn?</p> <p>20 A. From my review of the documentation</p> <p>21 yesterday, it did refresh my recollection.</p> <p>22 What you'll find is a variety of personnel at</p> <p>23 Highland that was involved in Project Unicorn,</p> <p>24 from the legal department to the tax department</p> <p>25 to corporate financing.</p>
<p style="text-align: right;">Page 16</p> <p>1 M. PATRICK</p> <p>2 Q. What specific role did Highland play</p> <p>3 in Project Unicorn?</p> <p>4 A. As I indicated, you have personnel</p> <p>5 that helped facilitate the organization of</p> <p>6 Project Unicorn and other aspects of it. But</p> <p>7 in addition, Highland became a partner in</p> <p>8 subsequent LLC agreements that, you know, did</p> <p>9 not use the word "Unicorn" in it. So Highland</p> <p>10 was also a partner in the predecessor entity,</p> <p>11 for lack of a better word.</p> <p>12 Q. Okay.</p> <p>13 MS. WINOGRAD: La Asia, could we</p> <p>14 please show Exhibit 2?</p> <p>15 (Exhibit 2 displayed and to be</p> <p>16 marked.)</p> <p>17 BY MS. WINOGRAD:</p> <p>18 Q. Mr. Patrick, do you see the document</p> <p>19 on the screen?</p> <p>20 A. Yes, I do.</p> <p>21 Q. Okay. Have you seen this document</p> <p>22 before?</p> <p>23 A. Yes, I have.</p> <p>24 Q. Are you familiar with this document?</p> <p>25 A. Yes, I am.</p>	<p style="text-align: right;">Page 17</p> <p>1 M. PATRICK</p> <p>2 Q. This is the SE Multifamily Holdings</p> <p>3 LLC Limited Liability Company Agreement,</p> <p>4 correct?</p> <p>5 A. Correct.</p> <p>6 Q. You're aware that this agreement was</p> <p>7 subsequently amended and restated, correct?</p> <p>8 A. Correct.</p> <p>9 Q. Can we refer to this as the LLC</p> <p>10 agreement going forward, and at times I might</p> <p>11 refer to it as the original LLC agreement?</p> <p>12 A. Yeah, I prefer --</p> <p>13 MS. DANDENEAU: And, Ms. Winograd, I</p> <p>14 think -- yeah, I was going to say the same</p> <p>15 thing. I think to avoid confusion, if we</p> <p>16 refer to the original LLC agreement and</p> <p>17 the amended LLC agreement, that would be</p> <p>18 easier --</p> <p>19 MS. WINOGRAD: Sure.</p> <p>20 MS. DANDENEAU: -- for the record.</p> <p>21 MS. WINOGRAD: We can refer to this</p> <p>22 as the original LLC agreement, and if</p> <p>23 there's ever a question about which one</p> <p>24 I'm referring to, just let me know and</p> <p>25 I'll specify, if I forget to use the word</p>

<p>Page 18</p> <p>1 M. PATRICK</p> <p>2 "original."</p> <p>3 BY MS. WINOGRAD:</p> <p>4 Q. It's dated August 23rd, 2018,</p> <p>5 correct?</p> <p>6 A. Correct.</p> <p>7 MS. WINOGRAD: La Asia, can we please</p> <p>8 scroll to page 17 of the agreement, which</p> <p>9 is PDF page 17?</p> <p>10 BY MS. WINOGRAD:</p> <p>11 Q. Okay. The original LLC agreement is</p> <p>12 signed by Mr. Dondero on behalf of Highland,</p> <p>13 correct?</p> <p>14 A. Correct.</p> <p>15 Q. And it's signed by Mr. Dondero on</p> <p>16 behalf of HCRE Partners, LLC, correct?</p> <p>17 A. Correct.</p> <p>18 Q. Can we refer to HCRE Partners, LLC as</p> <p>19 HCRE going forward?</p> <p>20 A. Yes.</p> <p>21 Q. Would you be surprised if I said I</p> <p>22 have documents to and from you in regard to the</p> <p>23 original LLC agreement?</p> <p>24 A. No.</p> <p>25 MS. DANDENEAU: Objection to form.</p>	<p>Page 19</p> <p>1 M. PATRICK</p> <p>2 BY MS. WINOGRAD:</p> <p>3 Q. So you were involved in the process</p> <p>4 of drafting the LLC agreement, correct?</p> <p>5 A. No.</p> <p>6 Q. Were you involved with any aspect of</p> <p>7 the original LLC agreement?</p> <p>8 A. Yes, I was.</p> <p>9 Q. What part of the process were you</p> <p>10 involved with?</p> <p>11 MS. DANDENEAU: Objection to form.</p> <p>12 A. Yeah, I -- I was involved in the</p> <p>13 coordination, the putting together, if you</p> <p>14 will, of using a variety of professionals,</p> <p>15 internal and external, to review and comment</p> <p>16 and draft this document.</p> <p>17 BY MS. WINOGRAD:</p> <p>18 Q. Okay. How did you get involved with</p> <p>19 the original LLC agreement?</p> <p>20 A. It came to my attention that this</p> <p>21 transaction, Project Unicorn, was occurring,</p> <p>22 and that there would be a need for a joint</p> <p>23 venture type entity, and -- and then I reached</p> <p>24 out to Hunton & Williams to prepare the LLC</p> <p>25 agreement, the original LLC agreement.</p>
<p>Page 20</p> <p>1 M. PATRICK</p> <p>2 Q. When you were involved in this, did</p> <p>3 you report to anyone?</p> <p>4 A. I reported to the CFO of Highland,</p> <p>5 Frank Waterhouse.</p> <p>6 Q. Okay.</p> <p>7 MS. WINOGRAD: La Asia, could we</p> <p>8 scroll back to page 2 of the agreement,</p> <p>9 which is PDF page 2?</p> <p>10 BY MS. WINOGRAD:</p> <p>11 Q. Do you know the purpose of the</p> <p>12 original LLC agreement?</p> <p>13 MS. DANDENEAU: Objection to form.</p> <p>14 A. Are we on page 2?</p> <p>15 BY MS. WINOGRAD:</p> <p>16 Q. This is page 2 and PDF page 2.</p> <p>17 A. Okay. Okay. I just couldn't see the</p> <p>18 page number.</p> <p>19 Generally speaking, again, the</p> <p>20 purpose of this LLC was to acquire certain real</p> <p>21 estate assets.</p> <p>22 Q. Pursuant to the original LLC</p> <p>23 agreement, SE Multifamily LLC was created,</p> <p>24 correct?</p> <p>25 A. Correct.</p>	<p>Page 21</p> <p>1 M. PATRICK</p> <p>2 Q. Can we refer to this entity as SE</p> <p>3 Multifamily?</p> <p>4 A. Yes.</p> <p>5 Q. Do you know the purpose of SE</p> <p>6 Multifamily?</p> <p>7 A. Yes. Was to acquire certain real</p> <p>8 estate assets.</p> <p>9 Q. Is it fair to say that SE Multifamily</p> <p>10 was a part of Project Unicorn?</p> <p>11 A. I believe so. I believe they're --</p> <p>12 yes.</p> <p>13 Q. At the time the original LLC</p> <p>14 agreement was executed, the members of SE</p> <p>15 Multifamily were Highland and HCRE, correct?</p> <p>16 A. Correct.</p> <p>17 Q. Do you know if the original LLC</p> <p>18 agreement was subject to negotiations between</p> <p>19 HCRE and Highland?</p> <p>20 MS. DANDENEAU: Objection to form.</p> <p>21 A. Mr. Dondero was the manager of HCRE,</p> <p>22 and he was also, I believe, the president of</p> <p>23 Strand Advisors, the GP of Highland. So if</p> <p>24 there was a -- if you want to use the word</p> <p>25 "negotiation," it was an internal negotiation,</p>

<p>Page 22</p> <p>1 M. PATRICK</p> <p>2 if you will, with himself balancing the</p> <p>3 equities between the two parties.</p> <p>4 BY MS. WINOGRAD:</p> <p>5 Q. Okay. Do you know if Highland got</p> <p>6 independent legal advice with respect to the</p> <p>7 original LLC agreement?</p> <p>8 A. Yeah, I would ask you to restate the</p> <p>9 question. The word "independent," is sort of</p> <p>10 confusing to me.</p> <p>11 Q. Sure. Do you know if any particular</p> <p>12 individual was responsible for reviewing the</p> <p>13 original LLC agreement to make sure it</p> <p>14 reflected Highland's intent?</p> <p>15 A. Yes. I would say internal and</p> <p>16 external professionals.</p> <p>17 Q. Who was that internal professional?</p> <p>18 A. I would begin with the legal team.</p> <p>19 Tim Courmoyer, he was a corporate attorney. I</p> <p>20 believe he reported to Thomas Surgent, and</p> <p>21 another gentleman named Freddy Chang. He was a</p> <p>22 more real estate lawyer, I imagine, during this</p> <p>23 time period. They were effectively responsible</p> <p>24 for conveying Highland's overall intent with</p> <p>25 respect to this documentation.</p>	<p>Page 23</p> <p>1 M. PATRICK</p> <p>2 Q. Do you know if any particular</p> <p>3 individual was responsible for reviewing the</p> <p>4 original LLC agreement to make sure it</p> <p>5 reflected HCRE's intent?</p> <p>6 A. Professionals -- professionals that</p> <p>7 were a part of the real estate team would be</p> <p>8 responsible for -- for at least providing input</p> <p>9 and comments to Mr. Dondero in his capacity as</p> <p>10 the manager of HCRE to provide HCRE's, if you</p> <p>11 will, intent.</p> <p>12 Q. Can you identify any of those</p> <p>13 individuals?</p> <p>14 A. The head of the real estate team</p> <p>15 would be Matt McGraner. There were other</p> <p>16 folks, Matt Goetz, and some others that I</p> <p>17 cannot recall offhand.</p> <p>18 Q. Did Matt McGraner work at Highland?</p> <p>19 A. Unfortunately, I don't really know</p> <p>20 what legal entity he worked for and received a</p> <p>21 W-2 income, if you will.</p> <p>22 Q. And do you know what entity Matt</p> <p>23 Goetz worked at?</p> <p>24 A. Again, it would be the same answer.</p> <p>25 I'm not sure what legal entity he was employed</p>
<p>Page 24</p> <p>1 M. PATRICK</p> <p>2 at.</p> <p>3 Q. Are you familiar with the entity</p> <p>4 HCRE?</p> <p>5 A. Yes, I am.</p> <p>6 Q. Do you know what it stands for?</p> <p>7 A. No, I do not.</p> <p>8 Q. Do you know when HCRE was formed?</p> <p>9 A. I cannot recall.</p> <p>10 Q. Do you know who controls HCRE?</p> <p>11 A. Yes, I do.</p> <p>12 Q. Who is that?</p> <p>13 A. Mr. James Dondero.</p> <p>14 Q. Does Mr. Dondero also manage HCRE?</p> <p>15 A. Yes.</p> <p>16 Q. Do you know who is authorized to make</p> <p>17 decisions on behalf of HCRE?</p> <p>18 A. Mr. Dondero.</p> <p>19 Q. Do you know if the identity of the</p> <p>20 decision maker has ever changed since HCRE was</p> <p>21 formed?</p> <p>22 A. Not to my knowledge that it has</p> <p>23 changed.</p> <p>24 Q. Do you know whether HCRE has ever had</p> <p>25 any employees?</p>	<p>Page 25</p> <p>1 M. PATRICK</p> <p>2 A. I do not know whether or not it has</p> <p>3 had employees.</p> <p>4 Q. At the time HCRE became a member of</p> <p>5 SE Multifamily, do you know if HCRE was</p> <p>6 capitalized?</p> <p>7 MS. DANDENEAU: Objection to form.</p> <p>8 A. I do not know.</p> <p>9 BY MS. WINOGRAD:</p> <p>10 Q. Do you know who owns HCRE?</p> <p>11 A. I have a general understanding of the</p> <p>12 ownership.</p> <p>13 Q. What is your general understanding of</p> <p>14 the ownership?</p> <p>15 A. That it is owned by principally three</p> <p>16 individuals.</p> <p>17 Q. Who are those three individuals?</p> <p>18 A. Mr. James Dondero, Matthew McGraner,</p> <p>19 and Scott Ellington.</p> <p>20 Q. Do you know what percentage interest</p> <p>21 Scott Ellington has in HCRE?</p> <p>22 A. I do not.</p> <p>23 Q. Do you know the percentage interest</p> <p>24 of the other owners?</p> <p>25 A. I do not.</p>

<p style="text-align: right;">Page 26</p> <p>1 M. PATRICK</p> <p>2 Q. Do you know if any of the owners ever</p> <p>3 put any capital in the form of debt or equity</p> <p>4 into HCRE?</p> <p>5 A. I cannot recall.</p> <p>6 Q. Do you know if the owners of HCRE</p> <p>7 have ever changed?</p> <p>8 A. Not to my knowledge.</p> <p>9 Q. During the time the original LLC</p> <p>10 agreement was being drafted, did HCRE rely on</p> <p>11 Highland employees to perform services for</p> <p>12 HCRE?</p> <p>13 A. I would -- I would at least say some</p> <p>14 services. There may be other services that I'm</p> <p>15 not aware of that HCRE relied upon other</p> <p>16 entities.</p> <p>17 MS. WINOGRAD: La Asia, can we scroll</p> <p>18 to PDF page 18 of the agreement? That's</p> <p>19 it. Okay.</p> <p>20 BY MS. WINOGRAD:</p> <p>21 Q. Mr. Patrick, do you see Schedule A?</p> <p>22 A. Yes, I do.</p> <p>23 Q. Do you see the column that says</p> <p>24 "Capital Contribution"?</p> <p>25 A. Yes, I do.</p>	<p style="text-align: right;">Page 27</p> <p>1 M. PATRICK</p> <p>2 Q. Do you know what this means?</p> <p>3 A. Yes, I do.</p> <p>4 Q. What does it mean?</p> <p>5 A. It generally refers to the initial,</p> <p>6 if you will, capital which could be reflective</p> <p>7 of either cash or assets that were placed into</p> <p>8 the partnership.</p> <p>9 Q. Okay. So if it says 51 for HCRE,</p> <p>10 that means HCRE put in \$51 to SE Multifamily;</p> <p>11 is that correct?</p> <p>12 A. That would be --</p> <p>13 MS. DANDENEAU: Objection to form.</p> <p>14 THE REPORTER: I'm sorry. I didn't</p> <p>15 hear the end of your answer. That would</p> <p>16 be --</p> <p>17 A. That would be correct.</p> <p>18 THE WITNESS: And I'll slow down to</p> <p>19 give Debra a chance to object. I</p> <p>20 apologize, Debra.</p> <p>21 BY MS. WINOGRAD:</p> <p>22 Q. Do you know where that \$51 came from?</p> <p>23 A. From -- I do not know.</p> <p>24 Q. As we discussed earlier, Highland was</p> <p>25 a member of SE Multifamily under the original</p>
<p style="text-align: right;">Page 28</p> <p>1 M. PATRICK</p> <p>2 LLC agreement, correct?</p> <p>3 A. Correct.</p> <p>4 Q. Do you know why Highland was involved</p> <p>5 in SE Multifamily?</p> <p>6 A. Yes.</p> <p>7 Q. Can you explain?</p> <p>8 A. Highland -- Highland provided</p> <p>9 infrastructure, if you will, and support, as</p> <p>10 well as a partner that had resources.</p> <p>11 Q. What kind of resources are you</p> <p>12 referring to?</p> <p>13 A. I refer generally to what I would</p> <p>14 call structural resources as well as monetary</p> <p>15 resources. And so it essentially allowed</p> <p>16 flexibility within this joint venture between</p> <p>17 the two parties.</p> <p>18 Q. What do you mean by the term</p> <p>19 "flexibility"?</p> <p>20 A. It allowed the opportunity to</p> <p>21 allocate cash, tax, and potentially any -- any</p> <p>22 other items or issues that may come up with</p> <p>23 respect to a complex real estate transaction</p> <p>24 like this. It's essentially a big -- big</p> <p>25 partner, well resourced.</p>	<p style="text-align: right;">Page 29</p> <p>1 M. PATRICK</p> <p>2 Q. Do you know whose idea it was to</p> <p>3 involve Highland in SE Multifamily?</p> <p>4 A. Do I know who -- I'm sorry?</p> <p>5 Q. Do you know whose idea it was to</p> <p>6 involve Highland?</p> <p>7 MS. DANDENEAU: Objection to form.</p> <p>8 A. No, I -- no, I cannot recall.</p> <p>9 BY MS. WINOGRAD:</p> <p>10 Q. Do you know if there were tax</p> <p>11 advantages to Highland's involvement in SE</p> <p>12 Multifamily?</p> <p>13 A. Yes.</p> <p>14 MS. DANDENEAU: And, Hayley, I'm</p> <p>15 just -- I'm going to -- the only reason</p> <p>16 I'm objecting to form is the use of the</p> <p>17 term "involvement," which is somewhat --</p> <p>18 it's ambiguous to me. So I don't really</p> <p>19 want to interrupt the flow of this, but --</p> <p>20 because Mr. Patrick has testified that</p> <p>21 involvement also means providing services.</p> <p>22 I think you're referring to the ownership.</p> <p>23 So I just -- again, I don't want to</p> <p>24 interrupt the flow, but...</p> <p>25</p>

<p>Page 30</p> <p>1 M. PATRICK</p> <p>2 BY MS. WINOGRAD:</p> <p>3 Q. Okay. Mr. Patrick, just to go back</p> <p>4 for a minute, I'm going to rephrase the</p> <p>5 question to see if it's more clear to you.</p> <p>6 Do you know whose idea it was to</p> <p>7 involve Highland as a member in SE Multifamily?</p> <p>8 A. No, I do not recall.</p> <p>9 Q. Okay. So you mentioned there were</p> <p>10 tax advantages to Highland's involvement in SE</p> <p>11 Multifamily?</p> <p>12 A. Well, look, let me sort of explain</p> <p>13 what -- how I interpret the word "tax</p> <p>14 advantages." As I indicated, Highland Capital</p> <p>15 Management is a well resourced entity. It had</p> <p>16 a strong balance sheet, if you will, as well as</p> <p>17 it had structural advantages of being a</p> <p>18 partnership.</p> <p>19 And so in these types of joint</p> <p>20 ventures where you may have, you know, a</p> <p>21 smaller partner, if you will, owned by</p> <p>22 individuals and a larger partner, a partnership</p> <p>23 that's well resourced, it can allow for</p> <p>24 flexibility from time to time to allocate</p> <p>25 taxable income in accordance with Subchapter K</p>	<p>Page 31</p> <p>1 M. PATRICK</p> <p>2 of the Internal Revenue Code to one of the</p> <p>3 partners.</p> <p>4 So it adds -- it adds a tremendous</p> <p>5 amount of flexibility, if you will, in those</p> <p>6 sorts of allocations.</p> <p>7 That's how I view tax advantages.</p> <p>8 It's very common in a variety of joint</p> <p>9 ventures, including real estate ventures.</p> <p>10 Q. Okay. So just -- just to make sure</p> <p>11 that I understand, why did -- do you know why</p> <p>12 HCRE wanted this flexibility to do -- to have</p> <p>13 this tax flexibility that you explained?</p> <p>14 MS. DANDENEAU: Objection to form.</p> <p>15 A. I'm not -- it's -- it's hard for me</p> <p>16 to say that I was in a position to know what</p> <p>17 HCRE wanted. So maybe you can rephrase your</p> <p>18 question.</p> <p>19 BY MS. WINOGRAD:</p> <p>20 Q. Sure. You said that the</p> <p>21 transaction -- that Highland's -- Highland as a</p> <p>22 member in SE Multifamily allowed the</p> <p>23 transaction flexibility. So I'm asking, why</p> <p>24 did HCRE want this flexibility?</p> <p>25 MS. DANDENEAU: Objection to form.</p>
<p>Page 32</p> <p>1 M. PATRICK</p> <p>2 A. I would characterize it as it was</p> <p>3 beneficial for both parties. When you have a</p> <p>4 joint venture, two parties coming together, you</p> <p>5 know, there's generally speaking a mutual</p> <p>6 benefit. So HCRE must have had some mutual</p> <p>7 benefit from their perspective. But that's</p> <p>8 about as far as I can go. I don't like to</p> <p>9 speculate too much as to the intent of the</p> <p>10 parties. But I think in this case, it's clear</p> <p>11 when you have a joint venture, there's some --</p> <p>12 there is some mutual benefit.</p> <p>13 BY MS. WINOGRAD:</p> <p>14 Q. What is your understanding of the</p> <p>15 benefit of the flexibility?</p> <p>16 MS. DANDENEAU: Objection to form.</p> <p>17 A. I think I've answered that, but, you</p> <p>18 know, again, when you have a partnership with a</p> <p>19 large, well resourced entity as well as another</p> <p>20 entity that, if you will, has the substantial</p> <p>21 knowhow, which is what I would call HCRE, you</p> <p>22 know, so that's the benefit.</p> <p>23 BY MS. WINOGRAD:</p> <p>24 Q. Okay. You mentioned a minute or so</p> <p>25 ago that Highland benefited from this, correct?</p>	<p>Page 33</p> <p>1 M. PATRICK</p> <p>2 A. Correct.</p> <p>3 Q. How did Highland benefit from this?</p> <p>4 A. Well, you know, it's one of those</p> <p>5 situations where the -- the race ended</p> <p>6 relatively quick before we could see how it</p> <p>7 finished. This entity was organized in August</p> <p>8 of 2018. Highland ended up filing for</p> <p>9 bankruptcy in the fall of 2019. You know,</p> <p>10 but -- so it's -- at this window time period,</p> <p>11 it is hard to say either one of the parties</p> <p>12 really benefited, if you will, unless -- just</p> <p>13 sort of -- the creation of this entity that</p> <p>14 would help facilitate the acquisition of the</p> <p>15 assets.</p> <p>16 Q. Do you know if Highland's</p> <p>17 participation as a member in SE Multifamily was</p> <p>18 expected to reduce or minimize HCRE's tax</p> <p>19 liability arising from its investment in SE</p> <p>20 Multifamily?</p> <p>21 A. No. I would not characterize that it</p> <p>22 was expected to -- yeah, I would not</p> <p>23 characterize it in that format.</p> <p>24 Q. Is it your understanding that</p> <p>25 Highland's bankruptcy filing changed the nature</p>

<p>Page 34</p> <p>1 M. PATRICK</p> <p>2 of the members' relationship?</p> <p>3 MS. DANDENEAU: Objection to form.</p> <p>4 A. I would say it definitely changed</p> <p>5 the -- sort of the nature of when you have one</p> <p>6 partner that files for bankruptcy, you know, it</p> <p>7 causes unexpected outcomes, I suppose.</p> <p>8 BY MS. WINOGRAD:</p> <p>9 Q. What were those unexpected outcomes</p> <p>10 in the context of HCRE and Highland?</p> <p>11 A. Well, this document was designed to</p> <p>12 be what I view as a fluid document. From my</p> <p>13 e-mails, you can -- fluid meaning that it would</p> <p>14 change essentially annually, you know, upon the</p> <p>15 discretion of its manager, Mr. James Dondero,</p> <p>16 with respect to the variety of the activities</p> <p>17 that would occur in it.</p> <p>18 And so, like, for instance, you see</p> <p>19 an e-mail when we're working on the amended LLC</p> <p>20 agreement that we were amending -- there's a</p> <p>21 tax rule that you can amend a partnership</p> <p>22 agreement up until March 15th to apply</p> <p>23 retroactively to the previous year. As you can</p> <p>24 see in this exhibit right here, we have blanks</p> <p>25 for specified company assets which were left</p>	<p>Page 35</p> <p>1 M. PATRICK</p> <p>2 blank because this is the start of the joint</p> <p>3 venture. But the sort of view, presumably, as</p> <p>4 there were sales going forward, then we would</p> <p>5 have the opportunity to take a look at the</p> <p>6 realizations, the tax consequences of those</p> <p>7 sales, and amend the document from -- from time</p> <p>8 to time.</p> <p>9 So for -- so it appears that the</p> <p>10 Highland bankruptcy sort of stalled that</p> <p>11 original view of this sort of fluid document</p> <p>12 that would be amended from time to time after</p> <p>13 looking at, if you will, in a colloquial sense,</p> <p>14 the P&L, the variety of sales within this</p> <p>15 entity and then making adjustments according to</p> <p>16 what the partners want to adjust.</p> <p>17 Q. Okay.</p> <p>18 MS. WINOGRAD: La Asia, can we stay</p> <p>19 on this document but scroll to page 10,</p> <p>20 which is also PDF page 10? And if we go</p> <p>21 down just a little bit. There we go.</p> <p>22 BY MS. WINOGRAD:</p> <p>23 Q. Mr. Patrick, do you see where it says</p> <p>24 "Distributions of Cash" under Article 6?</p> <p>25 A. Yes, I do.</p>
<p>Page 36</p> <p>1 M. PATRICK</p> <p>2 Q. Do you see where it says under</p> <p>3 Article 6.1(a) "Distributable Cash"?</p> <p>4 A. Yes, I do.</p> <p>5 Q. It says: Except as otherwise</p> <p>6 specifically provided in this Article VI and</p> <p>7 IX, all distributable cash shall be distributed</p> <p>8 51 percent to HCRE and 49 percent to Highland</p> <p>9 at such time and in such amounts as determined</p> <p>10 by the manager.</p> <p>11 Do you see that?</p> <p>12 A. Yes, I do.</p> <p>13 Q. Is it your understanding that these</p> <p>14 allocations of distributable cash under Article</p> <p>15 6.1 were intended to be consistent with the</p> <p>16 members' percentage interest in SE Multifamily?</p> <p>17 MS. DANDENEAU: Objection to form.</p> <p>18 A. No.</p> <p>19 BY MS. WINOGRAD:</p> <p>20 Q. Can you explain to me what</p> <p>21 distributable cash means, then?</p> <p>22 A. Well, it's a defined term, so I would</p> <p>23 ask that we would go to the definition and</p> <p>24 point to that definition.</p> <p>25 Q. Okay. But what -- if you could just</p>	<p>Page 37</p> <p>1 M. PATRICK</p> <p>2 explain it to me in simple terms.</p> <p>3 MS. DANDENEAU: Objection to form.</p> <p>4 A. Yeah. Essentially, subject to all</p> <p>5 the variety of definitions -- you know, the</p> <p>6 formula for the distributable cash, essentially</p> <p>7 it's the amount of cash, you know, that fits</p> <p>8 within that definition that James Dondero, in</p> <p>9 his discretion as the manager of HCRE, can</p> <p>10 determine from time to time to take whatever</p> <p>11 amount that he decides meets that definition</p> <p>12 and cause a distribution.</p> <p>13 BY MS. WINOGRAD:</p> <p>14 Q. Okay. So is it your testimony that</p> <p>15 the percentages under "Distributable Cash" have</p> <p>16 nothing to do with the members' percentage</p> <p>17 interest in SE Multifamily?</p> <p>18 MS. DANDENEAU: Objection to form.</p> <p>19 A. Yes.</p> <p>20 MS. WINOGRAD: Okay. La Asia, can we</p> <p>21 scroll down to PDF page 18?</p> <p>22 BY MS. WINOGRAD:</p> <p>23 Q. Okay. Do you see here Schedule A to</p> <p>24 the original LLC agreement?</p> <p>25 A. Yes, I do.</p>

<p>Page 38</p> <p>1 M. PATRICK</p> <p>2 Q. Do you see the "Percentage Interest"</p> <p>3 column?</p> <p>4 A. Yes, I do.</p> <p>5 Q. Is it a coincidence that the</p> <p>6 percentage interests in Schedule A are the same</p> <p>7 as the percentage interests under</p> <p>8 "Distributable Cash"?</p> <p>9 MS. DANDENEAU: Objection to form.</p> <p>10 A. Yeah, allow me to just sort of</p> <p>11 describe how a lot of these partnership</p> <p>12 agreements work. You can have percentage</p> <p>13 interests, you know, as scheduled out, you can</p> <p>14 have different percentages in the cash</p> <p>15 distribution, you can have different</p> <p>16 percentages in sort of what I call the taxable</p> <p>17 income allocations.</p> <p>18 They don't necessarily have to be the</p> <p>19 same numbers. Partnership rules allow for that</p> <p>20 flexibility. They can be, they can match, but</p> <p>21 they don't have to. And so when you're showing</p> <p>22 me the distributable cash, there's -- unless</p> <p>23 I'm -- unless that word "percentage interest"</p> <p>24 is somehow tied --</p> <p>25</p>	<p>Page 39</p> <p>1 M. PATRICK</p> <p>2 BY MS. WINOGRAD:</p> <p>3 Q. Sorry, I apologize for interrupting,</p> <p>4 but I'm going to move to strike that answer as</p> <p>5 it's not responsive to my question. I'm</p> <p>6 just --</p> <p>7 MS. DANDENEAU: Well, Ms. Winograd,</p> <p>8 this is why I objected to the form of your</p> <p>9 question, because it's really not very</p> <p>10 clear what you're asking. And you're</p> <p>11 right, he does not have to go -- go off on</p> <p>12 a soliloquy explaining to you --</p> <p>13 A. I'll keep it -- I'll keep it short.</p> <p>14 The percentage interest is not necessarily --</p> <p>15 MS. DANDENEAU: Well, why don't you</p> <p>16 let Ms. Winograd --</p> <p>17 THE WITNESS: Okay.</p> <p>18 MS. DANDENEAU: Why don't you let</p> <p>19 Ms. Winograd reask the question, and then</p> <p>20 you can think about the answer to the</p> <p>21 question.</p> <p>22 BY MS. WINOGRAD:</p> <p>23 Q. Okay. Mr. Patrick, I just -- I'm not</p> <p>24 asking for generalities here, but I'm just</p> <p>25 simply asking if it was a coincidence that the</p>
<p>Page 40</p> <p>1 M. PATRICK</p> <p>2 percentage interests in Schedule A are the same</p> <p>3 as the percentage interests under 6.1 -- under</p> <p>4 Article 6.1(a).</p> <p>5 A. Yeah, I would --</p> <p>6 MS. DANDENEAU: And objection to</p> <p>7 form.</p> <p>8 BY MS. WINOGRAD:</p> <p>9 Q. Mr. Patrick -- go ahead.</p> <p>10 A. The percentages in the "Distributable</p> <p>11 Cash," if they do not refer to the same -- in</p> <p>12 that definition, refer to percentage interest,</p> <p>13 those numbers do not necessarily have to be the</p> <p>14 same numbers.</p> <p>15 So if they are the same numbers, they</p> <p>16 can be, but they don't have to be. That is my</p> <p>17 answer.</p> <p>18 Q. Okay. Here they are the same</p> <p>19 numbers, though, correct?</p> <p>20 A. Correct.</p> <p>21 Q. Okay. Have you ever seen a version</p> <p>22 of a signed agreement for SE Multifamily where</p> <p>23 the distributable cash percentages are</p> <p>24 different than the percentage interest under</p> <p>25 Schedule A?</p>	<p>Page 41</p> <p>1 M. PATRICK</p> <p>2 A. I cannot recall.</p> <p>3 Q. Okay.</p> <p>4 MS. WINOGRAD: La Asia, can we scroll</p> <p>5 to page 12, which is PDF page 12 of the</p> <p>6 original LLC agreement?</p> <p>7 BY MS. WINOGRAD:</p> <p>8 Q. Okay. Do you see Article 6 where it</p> <p>9 says "Allocations of Profits and Losses"?</p> <p>10 A. Yes, I do.</p> <p>11 Q. Okay. Under Article 6.4(a), it says,</p> <p>12 "Except as provided in Section 6.4(b) and (c),</p> <p>13 and after the special allocations set forth in</p> <p>14 Section A.III.2 and A.III.3 of Schedule B,</p> <p>15 Profits and Losses (and items of income, gain,</p> <p>16 loss, deduction and credit relating thereto)</p> <p>17 shall be allocated 51 percent to HCRE and 49</p> <p>18 percent to HCMLP."</p> <p>19 Do you see that?</p> <p>20 A. Yes, I do.</p> <p>21 Q. HCMLP refers to Highland, correct?</p> <p>22 A. Correct.</p> <p>23 Q. Okay. This allocation of profits and</p> <p>24 losses is consistent with the members'</p> <p>25 percentage interest in Schedule A, correct?</p>

<p style="text-align: right;">Page 42</p> <p>1 M. PATRICK</p> <p>2 A. It is the same numbers, but it does</p> <p>3 not have a definitional reference to the</p> <p>4 percentage interest.</p> <p>5 Q. At the time the original LLC</p> <p>6 agreement was entered into, was it your</p> <p>7 understanding that the allocations of profits</p> <p>8 and losses would be allocated in the same ratio</p> <p>9 as the members' percentage interests?</p> <p>10 A. I do not recall my understanding.</p> <p>11 Q. You're aware that one of the</p> <p>12 amendments to the original LLC agreement was</p> <p>13 to -- was to the allocations of profits and</p> <p>14 losses, correct?</p> <p>15 A. Correct.</p> <p>16 Q. Since the time SE Multifamily was</p> <p>17 formed, were any of SE Multifamily's profits</p> <p>18 and losses ever allocated to HCRE?</p> <p>19 MS. DANDENEAU: Objection to form.</p> <p>20 A. Both -- both the original and the</p> <p>21 amended, I recall -- okay. Okay. I'm sorry,</p> <p>22 I'm just getting -- you're referring to --</p> <p>23 you're referring -- your question also</p> <p>24 implicates the amended, but your question is</p> <p>25 whether any profits and losses were allocated</p>	<p style="text-align: right;">Page 43</p> <p>1 M. PATRICK</p> <p>2 to HCRE. And under 6.4(a), they were.</p> <p>3 BY MS. WINOGRAD:</p> <p>4 Q. Okay. But as we talked about, this</p> <p>5 was later amended, which we'll get to later.</p> <p>6 A. Correct.</p> <p>7 Q. Okay. Under Article 6.4(b), it</p> <p>8 says all -- do you see Article 6.4(b)?</p> <p>9 A. Yes, I do.</p> <p>10 Q. It says, "All profits and losses from</p> <p>11 the company's rental and leasing activities</p> <p>12 shall be allocated 99 percent to HCMLP and 1</p> <p>13 percent to HCRE."</p> <p>14 Do you see that?</p> <p>15 A. Yes, I do.</p> <p>16 Q. Is it your understanding that at the</p> <p>17 time the original LLC was entered into, the</p> <p>18 members intended that the profits and losses</p> <p>19 from SE Multifamily's rental and leasing</p> <p>20 activities would be allocated 99 percent to</p> <p>21 Highland and 1 percent to HCRE?</p> <p>22 A. Yes, because it's reflected in the</p> <p>23 document.</p> <p>24 Q. Okay. Do you know why the profits</p> <p>25 and losses for the rental and leasing</p>
<p style="text-align: right;">Page 44</p> <p>1 M. PATRICK</p> <p>2 activities were allocated this way?</p> <p>3 A. No, I do not recall.</p> <p>4 Q. Okay.</p> <p>5 MS. WINOGRAD: La Asia, can we go to</p> <p>6 Exhibit 4, please?</p> <p>7 (Exhibit 4 displayed and to be</p> <p>8 marked.)</p> <p>9 BY MS. WINOGRAD:</p> <p>10 Q. Okay. Mr. Patrick, do you recognize</p> <p>11 this document?</p> <p>12 A. Yes, I do.</p> <p>13 Q. This is SE Multifamily Holdings LLC</p> <p>14 First Amended and Restated Limited Liability</p> <p>15 Company Agreement, correct?</p> <p>16 A. Correct.</p> <p>17 Q. Can we refer to this as the amended</p> <p>18 LLC agreement going forward?</p> <p>19 A. Yes.</p> <p>20 Q. It's dated as of March 15th of 2019,</p> <p>21 correct?</p> <p>22 A. Correct.</p> <p>23 Q. Do you know why it's dated March 15th</p> <p>24 of 2019?</p> <p>25 A. Because the last amendments, it's my</p>	<p style="text-align: right;">Page 45</p> <p>1 M. PATRICK</p> <p>2 understanding, occurred on that date.</p> <p>3 Q. Was there -- was there a deadline for</p> <p>4 amending the original LLC agreement?</p> <p>5 A. Yes, there was. As I mentioned</p> <p>6 earlier, there's a certain tax deadline where</p> <p>7 the partners can come together and amend their</p> <p>8 partnership agreement and make it effective for</p> <p>9 the prior taxable year. And that deadline is</p> <p>10 March 15th.</p> <p>11 Q. Okay. Did you have any role in</p> <p>12 connection with the amended LLC agreement?</p> <p>13 A. Yes, I did.</p> <p>14 Q. Okay. Were you involved in drafting</p> <p>15 the amended LLC agreement?</p> <p>16 A. No, I was not.</p> <p>17 Q. What parts of the LLC agreement were</p> <p>18 you involved with?</p> <p>19 A. The tax allocation part. But I was</p> <p>20 not involved in the part with respect to BH.</p> <p>21 Q. Okay.</p> <p>22 MS. WINOGRAD: La Asia, can we scroll</p> <p>23 to page 18 of the amended LLC agreement?</p> <p>24 BY MS. WINOGRAD:</p> <p>25 Q. Okay. Do you see here that James</p>

<p style="text-align: right;">Page 46</p> <p>1 M. PATRICK</p> <p>2 Dondero signed on behalf of both Highland and</p> <p>3 HCRE?</p> <p>4 A. Yes, I do.</p> <p>5 Q. Do you know if the amended LLC</p> <p>6 agreement was subject to negotiations between</p> <p>7 HCRE and Highland?</p> <p>8 A. I would again refer to my earlier</p> <p>9 testimony, that Mr. Dondero, as far as his role</p> <p>10 as the manager, weighed the equities between</p> <p>11 the two entities and -- and reached a decision,</p> <p>12 essentially negotiating with himself. That's</p> <p>13 what I'm saying. You know, you can -- you can</p> <p>14 weigh the variety of the equities when you have</p> <p>15 these kind of situations and make decisions</p> <p>16 upon it. And, you know, so -- and I'm -- you</p> <p>17 know, I'm sure he received input, if you will,</p> <p>18 from other folks.</p> <p>19 Q. Uh-huh. Do you know if Highland got</p> <p>20 independent legal advice with respect to the</p> <p>21 amended LLC agreement?</p> <p>22 A. Yes.</p> <p>23 Q. Who gave Highland this independent</p> <p>24 legal advice?</p> <p>25 A. Alex McGeoch at Hunton & Williams.</p>	<p style="text-align: right;">Page 47</p> <p>1 M. PATRICK</p> <p>2 Q. Do you know if HCRE got independent</p> <p>3 legal advice with respect to the amended LLC</p> <p>4 agreement?</p> <p>5 A. I do not.</p> <p>6 Q. So was it -- so is it your testimony</p> <p>7 that Hunton Williams was only representing</p> <p>8 Highland and not HCRE?</p> <p>9 A. I struggle with that word</p> <p>10 "representing," especially in this sort of</p> <p>11 context of an affiliate-type joint venture.</p> <p>12 Q. So let me rephrase that a little bit.</p> <p>13 Was it your understanding that Hunton Williams</p> <p>14 was giving independent legal advice only to</p> <p>15 Highland and not HCRE in connection with the</p> <p>16 amended LLC agreement?</p> <p>17 A. I would view it as they were giving</p> <p>18 independent legal advice to the entity with</p> <p>19 respect to the partnership agreement.</p> <p>20 Q. And when you say "to the entity," are</p> <p>21 you referring to Highland --</p> <p>22 A. No, I'm -- yeah, I'm referring to SE</p> <p>23 Multifamily Holdings LLC.</p> <p>24 Q. Do you know if any particular</p> <p>25 individual was responsible for reviewing the</p>
<p style="text-align: right;">Page 48</p> <p>1 M. PATRICK</p> <p>2 amended LLC agreement to make sure it reflected</p> <p>3 Highland's intent?</p> <p>4 A. Yes.</p> <p>5 Q. Who was that?</p> <p>6 A. Again, I would say the legal</p> <p>7 department, Tim Courmoyer, who reported to</p> <p>8 Thomas Surgent, and Freddy Chang. Both lawyers</p> <p>9 and legal professionals that reviewed this</p> <p>10 document were involved in the review and</p> <p>11 commenting of this document.</p> <p>12 Q. Do you know if any particular</p> <p>13 individual was responsible for reviewing the</p> <p>14 amended LLC agreement to make sure it reflected</p> <p>15 HCRE's intent?</p> <p>16 A. I -- I do not. The real estate team</p> <p>17 was copied on the document, but I don't know if</p> <p>18 there was anybody necessarily appointed for</p> <p>19 that role.</p> <p>20 Q. Do you recall who the individuals on</p> <p>21 the real estate team that were copied were?</p> <p>22 A. Well, I noted from my refresh</p> <p>23 yesterday that Mr. Matthew McGraner was copied</p> <p>24 on an e-mail that appears that I sent out on</p> <p>25 this amended LLC agreement.</p>	<p style="text-align: right;">Page 49</p> <p>1 M. PATRICK</p> <p>2 MS. WINOGRAD: Okay. Could we scroll</p> <p>3 to page 18, which is PDF page 19?</p> <p>4 BY MS. WINOGRAD:</p> <p>5 Q. Okay. Do you see that Liberty CLO</p> <p>6 Holdco --</p> <p>7 MS. WINOGRAD: Actually, can you go</p> <p>8 up a little bit, La Asia? A little bit --</p> <p>9 I guess, yeah, a little bit more. Yeah,</p> <p>10 sorry, down, down. There we go.</p> <p>11 Q. Do you see that Liberty Holdco, Ltd.</p> <p>12 was a party to the amended LLC agreement?</p> <p>13 A. Yes, I do.</p> <p>14 Q. Can I refer to them as Liberty?</p> <p>15 A. Yes, you can.</p> <p>16 Q. Do you know who Liberty was?</p> <p>17 A. Yes, I do.</p> <p>18 Q. Who was Liberty?</p> <p>19 A. Liberty is an entity, I believe, that</p> <p>20 was directly owned by Charitable DAF Fund, L.P.</p> <p>21 Q. Do you know why Liberty was brought</p> <p>22 in as a member of SE Multifamily?</p> <p>23 A. Yes. Yes, I do.</p> <p>24 Q. Why?</p> <p>25 A. Two-fold. One, it was -- it was</p>

<p style="text-align: right;">Page 50</p> <p>1 M. PATRICK</p> <p>2 presented for capital and receiving a nice</p> <p>3 return with respect to it. Secondly, what I</p> <p>4 recall is that the purchase and sale agreement</p> <p>5 with respect to the real estate assets</p> <p>6 acquired, there was a section within that that</p> <p>7 required a foreign entity, and -- and because</p> <p>8 of the natural relationship that Highland had</p> <p>9 with -- you know, I'll refer to -- with the</p> <p>10 DAF, which included Liberty CLO Holdco, which</p> <p>11 is organized as a foreign entity, it made it</p> <p>12 very natural to make an offer to Liberty CLO</p> <p>13 whether they, you know, wanted to participate</p> <p>14 in this joint venture, receive a return, and</p> <p>15 then sort of fulfill, if you will, the purchase</p> <p>16 and sale agreement provision.</p> <p>17 Q. Okay.</p> <p>18 MS. WINOGRAD: Can we scroll to the</p> <p>19 next page, La Asia?</p> <p>20 BY MS. WINOGRAD:</p> <p>21 Q. Okay. Do you see here that the BH</p> <p>22 Equities, LLC was a party to the amended LLC</p> <p>23 agreement?</p> <p>24 A. Yes, I do.</p> <p>25 Q. Can I refer to them as BH Equities?</p>	<p style="text-align: right;">Page 51</p> <p>1 M. PATRICK</p> <p>2 A. Okay.</p> <p>3 Q. Do you know who BH Equities was?</p> <p>4 A. I have a general understanding.</p> <p>5 Q. What's your general understanding?</p> <p>6 A. I believe they provide property</p> <p>7 management services.</p> <p>8 Q. Okay. Do you know why BH Equities</p> <p>9 was brought in as a member of SE Multifamily?</p> <p>10 A. No.</p> <p>11 Q. Do you have any understanding of what</p> <p>12 role BH Equities played in SE Multifamily?</p> <p>13 A. No.</p> <p>14 Q. Do you know when BH Equities got</p> <p>15 involved in SE Multifamily?</p> <p>16 A. I believe it was the last few -- the</p> <p>17 last few days leading up to and including March</p> <p>18 15th of -- of 2020.</p> <p>19 Q. Do you mean March 15th of 2019?</p> <p>20 A. Of 2019, excuse me, yes, that's</p> <p>21 correct.</p> <p>22 Q. Did you ever have any communications</p> <p>23 with anyone at BH Equities regarding Project</p> <p>24 Unicorn?</p> <p>25 A. No, I did not.</p>
<p style="text-align: right;">Page 52</p> <p>1 M. PATRICK</p> <p>2 Q. Do you know whether any entity</p> <p>3 affiliated with Highland had previously entered</p> <p>4 into any deals with BH Equities other than</p> <p>5 Project Unicorn?</p> <p>6 A. I do not have specific knowledge.</p> <p>7 MS. WINOGRAD: Okay. Can we go to</p> <p>8 PDF page 21? Yes.</p> <p>9 BY MS. WINOGRAD:</p> <p>10 Q. Okay. Have you seen Schedule A</p> <p>11 before?</p> <p>12 A. Yes, I have.</p> <p>13 Q. Do you see that there's a column for</p> <p>14 "Capital Contribution"?</p> <p>15 A. Yes, I have.</p> <p>16 Q. Do you see that it says HCRE's</p> <p>17 capital contribution was \$291,146,036?</p> <p>18 A. Yes, I do.</p> <p>19 Q. Do you know where HCRE got this 291</p> <p>20 million?</p> <p>21 A. No.</p> <p>22 MS. DANDENEAU: Objection to form.</p> <p>23 BY MS. WINOGRAD:</p> <p>24 Q. Do you know whether HCRE got the 291</p> <p>25 million as proceeds from a bridge loan?</p>	<p style="text-align: right;">Page 53</p> <p>1 M. PATRICK</p> <p>2 A. I have no --</p> <p>3 MS. DANDENEAU: Objection to form.</p> <p>4 THE REPORTER: I have no what? I'm</p> <p>5 sorry.</p> <p>6 A. I have no awareness of the bridge</p> <p>7 loan.</p> <p>8 BY MS. WINOGRAD:</p> <p>9 Q. So you have no knowledge of where</p> <p>10 this 291 million came from; is that correct?</p> <p>11 A. That is correct, during the time of</p> <p>12 the transaction.</p> <p>13 Q. Can you identify any source of</p> <p>14 capital that HCRE used to fund its capital</p> <p>15 contributions set forth on Schedule A?</p> <p>16 A. I had no personal visibility to the</p> <p>17 capital contributions.</p> <p>18 Q. Okay.</p> <p>19 MS. WINOGRAD: Can we show Exhibit</p> <p>20 18?</p> <p>21 (Exhibit 18 displayed and to be</p> <p>22 marked.)</p> <p>23 BY MS. WINOGRAD:</p> <p>24 Q. Okay. Mr. Patrick, do you see this</p> <p>25 e-mail?</p>

<p style="text-align: right;">Page 54</p> <p>1 M. PATRICK</p> <p>2 A. Yes, I do.</p> <p>3 Q. Did you write this e-mail?</p> <p>4 A. Yes, I did.</p> <p>5 Q. It's dated March 8th of 2019,</p> <p>6 correct?</p> <p>7 A. Correct.</p> <p>8 Q. And this is in regard to the amended</p> <p>9 LLC agreement, correct?</p> <p>10 A. Correct.</p> <p>11 Q. Okay. Do you see where you say, "The</p> <p>12 contribution provision schedule should reflect</p> <p>13 the equity capital from the debt bridge"?</p> <p>14 A. Yes, I do.</p> <p>15 Q. And you say, the contribution</p> <p>16 schedule should reflect -- oh, and then you</p> <p>17 say, "So you will need to drop that amount into</p> <p>18 Schedule A," correct?</p> <p>19 A. Correct.</p> <p>20 Q. Does the contribution schedule in</p> <p>21 this e-mail refer to the contribution schedule</p> <p>22 in Schedule A?</p> <p>23 A. Yes, it does.</p> <p>24 Q. And does this --</p> <p>25 MS. DANDENEAU: Ms. Winograd, can I</p>	<p style="text-align: right;">Page 55</p> <p>1 M. PATRICK</p> <p>2 just -- is it possible to scroll down and</p> <p>3 see the rest of the document?</p> <p>4 And also, Ms. La Cauty, this is not a</p> <p>5 document we've seen before. Could you</p> <p>6 please drop it into the chat at some point</p> <p>7 or e-mail it to us?</p> <p>8 BY MS. WINOGRAD:</p> <p>9 Q. Okay. When you said --</p> <p>10 MS. WINOGRAD: Yeah, you can scroll</p> <p>11 on down a little bit, La Asia, so that</p> <p>12 they can see the rest of the e-mail.</p> <p>13 BY MS. WINOGRAD:</p> <p>14 Q. What did you mean when you said</p> <p>15 "equity capital from the debt bridge"?</p> <p>16 A. I don't recall -- and this is where</p> <p>17 my recollection is being refreshed, you know,</p> <p>18 several years later. I didn't have any</p> <p>19 historic knowledge of the bridge loan or the</p> <p>20 debt bridge. It looks -- from this e-mail, it</p> <p>21 would appear that I did have some awareness of</p> <p>22 it. But as of right now, I have no memory of</p> <p>23 having that knowledge.</p> <p>24 Q. Okay. Have you heard of the KeyBank</p> <p>25 loan?</p>
<p style="text-align: right;">Page 56</p> <p>1 M. PATRICK</p> <p>2 A. Only in reference to these</p> <p>3 depositions. Prior to it, I had no</p> <p>4 recollection because I was not involved.</p> <p>5 Q. Okay. Well, when you see in this</p> <p>6 e-mail that you refer to the debt bridge, does</p> <p>7 that refresh your recollection --</p> <p>8 A. No.</p> <p>9 Q. -- about where HCRE's equity capital</p> <p>10 came from?</p> <p>11 A. No. No, no, no. This is the --</p> <p>12 yeah, no, I see it and I understand it. It</p> <p>13 appears that I did have knowledge back then,</p> <p>14 but I do not remember that now.</p> <p>15 MS. WINOGRAD: Okay. Let's take a</p> <p>16 five-minute break. Let's come back at</p> <p>17 10:05 a.m. Eastern Time, if that works for</p> <p>18 everyone.</p> <p>19 MS. DANDENEAU: That works for me.</p> <p>20 MR. MORRIS: Can we make it ten? I'm</p> <p>21 sorry. I just --</p> <p>22 MS. WINOGRAD: 10:10?</p> <p>23 MR. MORRIS: Yeah, please.</p> <p>24 MS. WINOGRAD: Yeah, that's fine.</p> <p>25 I'll see everybody at 10:10 a.m. Eastern</p>	<p style="text-align: right;">Page 57</p> <p>1 M. PATRICK</p> <p>2 Time.</p> <p>3 (Recess taken 8:59 a.m. Central Time</p> <p>4 - 9:11 a.m. Central Time.)</p> <p>5 MS. WINOGRAD: La Asia, can we go</p> <p>6 back to Exhibit 18, please?</p> <p>7 BY MS. WINOGRAD:</p> <p>8 Q. Okay. Mr. Patrick, do you see this</p> <p>9 document? It's the one we were just talking</p> <p>10 about.</p> <p>11 A. Yes, I do.</p> <p>12 Q. Okay. So you were aware that HCRE</p> <p>13 was borrowing hundreds of millions of dollars</p> <p>14 to finance their investment in SE Multifamily,</p> <p>15 right?</p> <p>16 A. I do not have current knowledge of</p> <p>17 that awareness. You know, I see what the</p> <p>18 e-mail expressed.</p> <p>19 Q. Does this e-mail that you wrote just</p> <p>20 a few days before the execution of the amended</p> <p>21 LLC agreement refresh your recollection as to</p> <p>22 the fact that HCRE was borrowing hundreds of</p> <p>23 millions of dollars?</p> <p>24 A. No, it did not.</p> <p>25 Q. Okay. You gave this instruction to</p>

<p>Page 58</p> <p>1 M. PATRICK</p> <p>2 Paul Broadus that the contribution schedule</p> <p>3 should reflect the equity capital from the debt</p> <p>4 bridge, did you not?</p> <p>5 A. Yes, it appears so in this e-mail.</p> <p>6 Q. Can you think of anything other than</p> <p>7 the KeyBank loan that this debt bridge would</p> <p>8 have been referring to?</p> <p>9 MS. DANDENEAU: Objection to form.</p> <p>10 A. I just don't have a recollection of</p> <p>11 when I used that word "debt bridge" in this</p> <p>12 e-mail, what I was referring to.</p> <p>13 BY MS. WINOGRAD:</p> <p>14 Q. You know that HCRE's capital</p> <p>15 contribution was proceeds from a loan, though,</p> <p>16 right?</p> <p>17 A. No, I --</p> <p>18 MS. DANDENEAU: Objection to form.</p> <p>19 A. I do not have a recollection.</p> <p>20 BY MS. WINOGRAD:</p> <p>21 Q. It's your testimony that you have no</p> <p>22 recollection of where the \$291 million came</p> <p>23 from?</p> <p>24 A. That is correct.</p> <p>25 Q. And you have no recollection as to</p>	<p>Page 59</p> <p>1 M. PATRICK</p> <p>2 whether this was a loan?</p> <p>3 A. What is a loan? I'm sorry, what --</p> <p>4 Q. The \$291 million, was that proceeds</p> <p>5 from a loan?</p> <p>6 A. Yeah, I have no recollection.</p> <p>7 Q. Can you think of any type of loan</p> <p>8 that your e-mail would have been referring to</p> <p>9 when you say debt bridge?</p> <p>10 MS. DANDENEAU: Objection to form.</p> <p>11 A. Again, I don't recall what I was</p> <p>12 referring to when I wrote this e-mail.</p> <p>13 MS. WINOGRAD: La Asia, let's scroll</p> <p>14 to page 12, PDF page 12.</p> <p>15 MS. CANTEY: You mean the amended</p> <p>16 agreement or stay on --</p> <p>17 MS. WINOGRAD: I tell you, let's go</p> <p>18 to Exhibit 4, the amended and restated LLC</p> <p>19 agreement.</p> <p>20 MS. CANTEY: Okay.</p> <p>21 BY MS. WINOGRAD:</p> <p>22 Q. Okay. Do you see here where it says</p> <p>23 Article 6.4, "Allocations of Profits and</p> <p>24 Losses"?</p> <p>25 A. Yes, I do.</p>
<p>Page 60</p> <p>1 M. PATRICK</p> <p>2 Q. Okay. You were involved with</p> <p>3 drafting this provision, right?</p> <p>4 A. No, I was not.</p> <p>5 MS. WINOGRAD: Okay. Could we show</p> <p>6 Exhibit 15, please?</p> <p>7 (Exhibit 15 displayed and to be</p> <p>8 marked.)</p> <p>9 MS. WINOGRAD: Okay. Can we scroll</p> <p>10 to the third e-mail down?</p> <p>11 BY MS. WINOGRAD:</p> <p>12 Q. Do you see this e-mail, Mr. Patrick?</p> <p>13 A. Yes, I do.</p> <p>14 Q. Did you write this?</p> <p>15 A. Yes, I did.</p> <p>16 Q. It's dated March 4th of 2019, right?</p> <p>17 A. Correct.</p> <p>18 Q. Okay. And it's to Freddy Chang,</p> <p>19 right?</p> <p>20 A. Correct.</p> <p>21 Q. Okay. And you say, "I'd like to get</p> <p>22 this to the return preparer ASAP to get sign</p> <p>23 off on the tax allocations," correct?</p> <p>24 A. Correct.</p> <p>25 Q. Does this refresh your recollection</p>	<p>Page 61</p> <p>1 M. PATRICK</p> <p>2 about your involvement in Article 6.4?</p> <p>3 MS. DANDENEAU: Objection to form. I</p> <p>4 think that the question that you asked him</p> <p>5 was whether he was involved in drafting</p> <p>6 Article 4.</p> <p>7 BY MS. WINOGRAD:</p> <p>8 Q. Mr. Patrick, were you involved with</p> <p>9 Article 6.4?</p> <p>10 A. Yes.</p> <p>11 MS. DANDENEAU: Objection to form.</p> <p>12 BY MS. WINOGRAD:</p> <p>13 Q. How were you involved?</p> <p>14 A. I was involved in the discussions</p> <p>15 with respect to the allocation percentages that</p> <p>16 would be placed into 6.4.</p> <p>17 MS. WINOGRAD: Okay. La Asia, could</p> <p>18 we go back to Exhibit 4, PDF page 12,</p> <p>19 please?</p> <p>20 BY MS. WINOGRAD:</p> <p>21 Q. Okay. Let's look at Article 6.4(a).</p> <p>22 It says -- okay. Well, first, who did you</p> <p>23 discuss this article with?</p> <p>24 A. This article was discussed with Rick</p> <p>25 Swadley, our chief of tax compliance; Paul</p>

<p>Page 62</p> <p>1 M. PATRICK</p> <p>2 Broaddus; Dave Klos in corporate. I cannot</p> <p>3 recall offhand if anybody on the legal team was</p> <p>4 involved. And then Mr. James Dondero.</p> <p>5 BY MS. WINOGRAD:</p> <p>6 Q. Okay. What was said during those</p> <p>7 discussions?</p> <p>8 A. The tax compliance team in 2019 had</p> <p>9 made an assessment, if you will, of the taxable</p> <p>10 income in loss from this entity, SE Multifamily</p> <p>11 Holdings. And because we had the March 15th</p> <p>12 date, it allows the partnership to make a</p> <p>13 determination of the allocations of the taxable</p> <p>14 income.</p> <p>15 I recall that Mr. Swadley and</p> <p>16 Mr. Broaddus gave a presentation with respect</p> <p>17 to the dollar amounts of the taxable income,</p> <p>18 and there was discussion with respect to how</p> <p>19 that taxable income for 2018 could be allocated</p> <p>20 amongst the partners. And the final</p> <p>21 determination of that discussion is reflected</p> <p>22 here at 6.4(a).</p> <p>23 Q. Okay. And as we discussed earlier,</p> <p>24 the profits and losses in the original LLC</p> <p>25 agreement were 51 percent to HCRE and 49</p>	<p>Page 63</p> <p>1 M. PATRICK</p> <p>2 percent to Highland, right?</p> <p>3 A. Correct.</p> <p>4 Q. Okay. Do you know why the tax</p> <p>5 allocations were changed?</p> <p>6 A. Yes. So at the beginning of 2019,</p> <p>7 the tax compliance team was able to take a look</p> <p>8 at the taxable income, the profit and losses.</p> <p>9 That's what 6.4 is referring to, taxable income</p> <p>10 profit and losses under the definition.</p> <p>11 So they had a -- they had an</p> <p>12 assessment of what the profit and losses of the</p> <p>13 partnership were. And so when I refer back to</p> <p>14 my earlier testimony, this was a fluid document</p> <p>15 intended to be amended annually with respect to</p> <p>16 the variety of items, the sale and dispositions</p> <p>17 of assets with respect to cash, with respect to</p> <p>18 tax items. So this was going to be what I</p> <p>19 would view as a reoccurring discussion.</p> <p>20 So that's why it changed, because we</p> <p>21 had information now that we didn't have, you</p> <p>22 know, at the time of the original LLC agreement</p> <p>23 with respect to the taxable income and loss of</p> <p>24 this entity.</p> <p>25 Q. How much taxable income was there?</p>
<p>Page 64</p> <p>1 M. PATRICK</p> <p>2 A. I don't -- I do not recall.</p> <p>3 Q. Okay. So do you know who made the</p> <p>4 decision to change the profits and losses?</p> <p>5 A. To change -- so you're referring to</p> <p>6 changing the original 6.4(a) allocation to the</p> <p>7 6.4(a) allocation in the amended LLC agreement,</p> <p>8 right? That's your --</p> <p>9 Q. To change it, right.</p> <p>10 A. Yeah, yeah, yeah, yeah. No, no, no,</p> <p>11 that determination was made by the manager of</p> <p>12 HCRE, Mr. James Dondero, per a presentation by</p> <p>13 the Highland, you know, tax department.</p> <p>14 Q. Okay. Do you know why 94 percent of</p> <p>15 the profits and losses was allocated to</p> <p>16 Highland?</p> <p>17 THE REPORTER: I'm sorry. I saw your</p> <p>18 lips move, but I didn't hear you.</p> <p>19 MS. WINOGRAD: I said, do you know</p> <p>20 why the 94 percent profits was allocated</p> <p>21 to Highland.</p> <p>22 THE REPORTER: Yes, I heard your</p> <p>23 question. I didn't hear the answer.</p> <p>24 A. Yeah. No, I was just formulating the</p> <p>25 answer in my mind. When we made -- when that</p>	<p>Page 65</p> <p>1 M. PATRICK</p> <p>2 discussion with the tax team and Mr. Dondero</p> <p>3 occurred, it's -- the -- the determination was</p> <p>4 to make this allocation because Highland,</p> <p>5 again, was a more well resourced entity,</p> <p>6 resourced structurally as well as financially,</p> <p>7 than HCRE. And I seem to recall that there was</p> <p>8 not cash, if you will, available within the</p> <p>9 overall entity to make -- for that entity to</p> <p>10 make a, if you will, a tax distribution.</p> <p>11 And so you have HCRE, which is owned</p> <p>12 by individuals, you have HCMLP, which is a well</p> <p>13 resourced entity, and so it made a lot of sense</p> <p>14 to make that allocation to Highland, at least</p> <p>15 initially at the beginning of this endeavor.</p> <p>16 Q. Okay. Do you know if any profits</p> <p>17 were ever allocated to HCRE?</p> <p>18 A. Again, this sort of -- the race began</p> <p>19 and ended relatively quick per the filing of</p> <p>20 Highland's bankruptcy. You know, so the</p> <p>21 expectation was that the 2019 P&L, there would</p> <p>22 be a meeting sometime in 2020, before March</p> <p>23 15th, where there would be an assessment with</p> <p>24 respect to the allocation of cash, of the</p> <p>25 properties being sold, as well as the taxable</p>

<p>Page 66</p> <p>1 M. PATRICK</p> <p>2 income.</p> <p>3 Just during this time period, my</p> <p>4 understanding is that the cash and these real</p> <p>5 estate deals are, generally speaking, directed</p> <p>6 to pay off the lending group. You know, so the</p> <p>7 equity, unfortunately, receives the taxable</p> <p>8 income, but there's not cash readily available</p> <p>9 to make a tax distribution to its partners.</p> <p>10 It's a very common problem that occurs in real</p> <p>11 estate transactions.</p> <p>12 MS. WINOGRAD: Okay. I'm going to</p> <p>13 move to strike that answer because it</p> <p>14 wasn't directly responsive to my question.</p> <p>15 BY MS. WINOGRAD:</p> <p>16 Q. Do you know if HCRE ever had profits</p> <p>17 allocated to it?</p> <p>18 A. If it had profits allocated to it.</p> <p>19 There's only been -- ever had -- to my</p> <p>20 understanding, there's only two documents.</p> <p>21 There's the original and the amended. And</p> <p>22 Highland filed for bankruptcy in the fall of</p> <p>23 2019. So, again, there was not an opportunity</p> <p>24 to allocate -- do different allocations.</p> <p>25 So I guess what I'm saying is no, it</p>	<p>Page 67</p> <p>1 M. PATRICK</p> <p>2 was my understanding the -- HCRE has not been</p> <p>3 allocated taxable income for the reasons that I</p> <p>4 explained.</p> <p>5 Q. Okay. Are you aware that the owners</p> <p>6 of Highland purport to be charitable</p> <p>7 foundations?</p> <p>8 MS. DANDENEAU: Objection to form.</p> <p>9 A. Purport -- the owners of Highland</p> <p>10 purport to be charitable foundations. No,</p> <p>11 I'm -- I'm not aware that the owners of</p> <p>12 Highland purport themselves to be charitable</p> <p>13 foundations.</p> <p>14 BY MS. WINOGRAD:</p> <p>15 Q. Are you aware that the owners -- the</p> <p>16 ultimate owners of Highland are exempt from</p> <p>17 paying taxes?</p> <p>18 MS. DANDENEAU: Object to form.</p> <p>19 A. I would say the ultimate owners of</p> <p>20 Highland are subject to taxable income, is my</p> <p>21 awareness.</p> <p>22 BY MS. WINOGRAD:</p> <p>23 Q. Has -- are you aware of any taxes</p> <p>24 that Highland ever paid on SE Multifamily's</p> <p>25 profits?</p>
<p>Page 68</p> <p>1 M. PATRICK</p> <p>2 MS. DANDENEAU: Objection to form.</p> <p>3 A. No, I'm not aware of any taxes that</p> <p>4 Highland has paid with respect to this because</p> <p>5 it is a pass-through entity.</p> <p>6 BY MS. WINOGRAD:</p> <p>7 Q. Can you identify the owners of</p> <p>8 Highland?</p> <p>9 MS. DANDENEAU: Objection to the</p> <p>10 form. And are you talking about a</p> <p>11 specific time period?</p> <p>12 MS. WINOGRAD: As of the time this</p> <p>13 amended LLC agreement was entered into.</p> <p>14 A. Please restate the question again.</p> <p>15 BY MS. WINOGRAD:</p> <p>16 Q. Are you aware of the owners of</p> <p>17 Highland?</p> <p>18 MS. DANDENEAU: Objection to form</p> <p>19 unless you're going to qualify it by as of</p> <p>20 the time this LLC agreement was entered</p> <p>21 into, the original LLC agreement.</p> <p>22 BY MS. WINOGRAD:</p> <p>23 Q. Mr. Patrick, can you identify the</p> <p>24 owners of Highland as of the time the amended</p> <p>25 LLC agreement was entered into?</p>	<p>Page 69</p> <p>1 M. PATRICK</p> <p>2 A. Yes, I believe it was Strand</p> <p>3 Advisors, an entity called Hunter Mountain, and</p> <p>4 then perhaps some other small interests. But I</p> <p>5 don't have the precise amounts or the names.</p> <p>6 Q. Can you identify the ultimate</p> <p>7 beneficial owners of Highland as of the time</p> <p>8 this amended LLC agreement was entered into?</p> <p>9 A. Ultimate beneficial owners of</p> <p>10 Highland. I would say Hunter Mountain.</p> <p>11 Q. Was there any other beneficial owner</p> <p>12 of Highland?</p> <p>13 A. Any other beneficial owner. Any</p> <p>14 other beneficial --</p> <p>15 Q. Let me rephrase the question.</p> <p>16 A. Okay, look, what do you mean by</p> <p>17 "beneficial"? Please define that.</p> <p>18 Q. Who owns Hunter Mountain?</p> <p>19 A. My understanding, it's an entity</p> <p>20 called Beacon, LLC. It might be Beacon</p> <p>21 Mountain, LLC.</p> <p>22 Q. Are you aware of any other beneficial</p> <p>23 owners of Hunter Mountain?</p> <p>24 A. No.</p> <p>25 Q. Isn't the purpose of allocating 94</p>

<p style="text-align: right;">Page 70</p> <p>1 M. PATRICK</p> <p>2 percent of profits and losses to Highland to</p> <p>3 eliminate the payment of taxes associated with</p> <p>4 any of SE Multifamily's profits?</p> <p>5 MS. DANDENEAU: Objection to form.</p> <p>6 A. No.</p> <p>7 BY MS. WINOGRAD:</p> <p>8 Q. So can you explain to me again just</p> <p>9 so that I have an understanding of what the</p> <p>10 purpose of allocating 94 percent of profits to</p> <p>11 Highland was?</p> <p>12 MS. DANDENEAU: Objection to form.</p> <p>13 Is that a question?</p> <p>14 MS. WINOGRAD: Yes, it was a</p> <p>15 question. I'm asking if he could explain</p> <p>16 to me again the purpose of allocating 94</p> <p>17 percent of the profits and losses to</p> <p>18 Highland.</p> <p>19 A. The purpose was that Highland</p> <p>20 vis-a-vis the other -- HCRE, if you will, was a</p> <p>21 well resourced entity.</p> <p>22 BY MS. WINOGRAD:</p> <p>23 Q. Was there -- was there a tax purpose</p> <p>24 of allocating 94 percent of profits and losses</p> <p>25 to Highland?</p>	<p style="text-align: right;">Page 71</p> <p>1 M. PATRICK</p> <p>2 MS. DANDENEAU: Objection to form.</p> <p>3 A. Yeah, I don't -- I don't know what</p> <p>4 you mean by "tax purpose."</p> <p>5 BY MS. WINOGRAD:</p> <p>6 Q. Is it your understanding that the</p> <p>7 allocation of profits and losses to Highland</p> <p>8 was one of the reasons that Highland was</p> <p>9 brought into this deal?</p> <p>10 MS. DANDENEAU: Objection to form.</p> <p>11 A. One of the reasons. I cannot recall</p> <p>12 precisely.</p> <p>13 BY MS. WINOGRAD:</p> <p>14 Q. Okay.</p> <p>15 A. I mean, I heard you say one of the</p> <p>16 reasons. And, you know, I do -- I would say</p> <p>17 yes, because I think, as I earlier described,</p> <p>18 the organizational nature of Highland being a</p> <p>19 partnership.</p> <p>20 Q. Okay. And if I asked this already,</p> <p>21 then I apologize, but I'm just trying to</p> <p>22 understand this. Are you aware of any taxes</p> <p>23 Highland has ever paid on SE Multifamily's</p> <p>24 profits?</p> <p>25 MS. DANDENEAU: Objection to form.</p>
<p style="text-align: right;">Page 72</p> <p>1 M. PATRICK</p> <p>2 A. No.</p> <p>3 BY MS. WINOGRAD:</p> <p>4 Q. Are you familiar with the term</p> <p>5 "economic substance"?</p> <p>6 A. Yes, I am.</p> <p>7 Q. Do you know if there was any economic</p> <p>8 substance in allocating 94 percent of the</p> <p>9 profits and losses to Highland?</p> <p>10 A. Yes, there was.</p> <p>11 Q. What was that economic substance?</p> <p>12 A. The economic substance is that over</p> <p>13 time within the partnership, as the partnership</p> <p>14 would make sales and distributions, if you</p> <p>15 will, of cash, that there's -- that there would</p> <p>16 be an expectancy of such distribution in the</p> <p>17 future, and that gives it economic substance to</p> <p>18 the earlier allocation under Subchapter K.</p> <p>19 Q. Do you know if there were any -- ever</p> <p>20 any projections that showed losses to SE</p> <p>21 Multifamily?</p> <p>22 A. I'm sorry, say that again.</p> <p>23 Q. Do you know if there were ever any</p> <p>24 projections that showed losses to SE</p> <p>25 Multifamily?</p>	<p style="text-align: right;">Page 73</p> <p>1 M. PATRICK</p> <p>2 A. I cannot recall, but I'm not clear --</p> <p>3 I'm not clear what kind of projections you're</p> <p>4 referring to.</p> <p>5 Q. Projections showing what the taxable</p> <p>6 profits for SE Multifamily were.</p> <p>7 A. Yeah, I -- I don't recall.</p> <p>8 MS. WINOGRAD: Okay. La Asia, can we</p> <p>9 pull up Exhibit 12?</p> <p>10 (Exhibit 12 displayed and to be</p> <p>11 marked.)</p> <p>12 BY MS. WINOGRAD:</p> <p>13 Q. Okay. Mr. Patrick, do you recognize</p> <p>14 this e-mail?</p> <p>15 A. Yes, I do.</p> <p>16 Q. Okay. You wrote this e-mail, right?</p> <p>17 A. Correct.</p> <p>18 Q. This e-mail relates to the amended</p> <p>19 LLC agreement that we've been discussing,</p> <p>20 correct?</p> <p>21 A. Correct.</p> <p>22 Q. What's the date on the e-mail?</p> <p>23 A. February 28th, 2019.</p> <p>24 Q. Exactly. Okay. This is an e-mail</p> <p>25 from you to Tim Courmoyer, Freddy Chang, David</p>

<p style="text-align: right;">Page 74</p> <p>1 M. PATRICK</p> <p>2 Klos, cc'ing some other Highland employees,</p> <p>3 correct?</p> <p>4 A. Correct.</p> <p>5 Q. In the first line of the e-mail, you</p> <p>6 stated, "We have a March 15 tax deadline that</p> <p>7 permits the retroactive amendment of this</p> <p>8 partnership agreement."</p> <p>9 Do you see that?</p> <p>10 A. Yes, I do.</p> <p>11 Q. And the partnership agreement is</p> <p>12 referring to the LLC agreement, correct, the</p> <p>13 original LLC agreement? Correct?</p> <p>14 A. Correct.</p> <p>15 Q. And we discussed this tax deadline</p> <p>16 earlier. Can you help me understand again what</p> <p>17 this tax deadline was? I just want to make</p> <p>18 sure I understand.</p> <p>19 A. Sure. So after the close of a</p> <p>20 year -- in this case it's 2018 -- the</p> <p>21 partnership rules allow the partners to come</p> <p>22 together and allocate to make cash allocations</p> <p>23 and tax allocations effective for the prior</p> <p>24 taxable year, so the 2018 year, doing it in the</p> <p>25 subsequent year. Here it would be 2019. But</p>	<p style="text-align: right;">Page 75</p> <p>1 M. PATRICK</p> <p>2 you have until March 15th to amend your</p> <p>3 partnership agreement to sort of decide how</p> <p>4 you're going to split the pie amongst the</p> <p>5 partnership.</p> <p>6 Q. Okay. So to confirm, does it mean</p> <p>7 that the amended LLC agreement had to be signed</p> <p>8 by March 15th of 2019 to be effective as of</p> <p>9 August 23rd of 2018?</p> <p>10 A. There needed to be an agreement</p> <p>11 amongst the partners before March 15th to make</p> <p>12 it effective in August of 2018.</p> <p>13 Q. Okay. So do you know why the</p> <p>14 original LLC agreement was being amended?</p> <p>15 A. Yes, because information after the</p> <p>16 end of the year came to the -- came to the tax</p> <p>17 department as far as having a general</p> <p>18 understanding of the taxable income and loss of</p> <p>19 the partnership, as well as availability of</p> <p>20 cash.</p> <p>21 Q. Okay. Did you -- did you draft the</p> <p>22 amendments you refer to in your e-mail?</p> <p>23 A. No.</p> <p>24 Q. Okay. Did you review them?</p> <p>25 A. I believe I did.</p>
<p style="text-align: right;">Page 76</p> <p>1 M. PATRICK</p> <p>2 Q. Okay. During your involvement in</p> <p>3 these amendments, who did you report to?</p> <p>4 A. Frank Waterhouse, the chief financial</p> <p>5 officer of Highland.</p> <p>6 Q. Okay. Do you consider yourself to be</p> <p>7 a careful professional?</p> <p>8 MS. DANDENEAU: Objection to form.</p> <p>9 A. Yes.</p> <p>10 BY MS. WINOGRAD:</p> <p>11 Q. Yes, okay. Do you pay attention to</p> <p>12 detail when you draft documents?</p> <p>13 A. I don't draft documents.</p> <p>14 Q. Okay. Let me rephrase the question.</p> <p>15 Do you pay attention to detail when</p> <p>16 you review documents?</p> <p>17 A. To the best of my ability.</p> <p>18 Q. Okay. And when you're reviewing</p> <p>19 documents in your professional capacity, are</p> <p>20 you careful to make sure the documents reflect</p> <p>21 the intent of the people you are working for?</p> <p>22 A. To the best of my ability.</p> <p>23 Q. Okay. So the first amendment in this</p> <p>24 e-mail you refer to is BH ownership. Do you</p> <p>25 see that?</p>	<p style="text-align: right;">Page 77</p> <p>1 M. PATRICK</p> <p>2 A. Yes, I do.</p> <p>3 Q. Does this refer to BH Equities coming</p> <p>4 in as an owner to SE Multifamily?</p> <p>5 A. I believe it would.</p> <p>6 Q. When BH Equities was coming in as an</p> <p>7 owner to SE Multifamily, do you know if there</p> <p>8 was ever discussions about whether HCRE would</p> <p>9 make any additional capital contributions?</p> <p>10 A. I'm not aware of that. I have no</p> <p>11 knowledge.</p> <p>12 Q. Okay. The third amendment you refer</p> <p>13 to in this e-mail is the amendment to the cash</p> <p>14 distributions and tax allocations section.</p> <p>15 Do you see that?</p> <p>16 A. Yes, I do.</p> <p>17 Q. Okay. And it looks like there's a</p> <p>18 couple of attachments in this e-mail, right?</p> <p>19 A. Yes.</p> <p>20 MS. WINOGRAD: Okay. La Asia, can we</p> <p>21 scroll down to PDF page 29?</p> <p>22 BY MS. WINOGRAD:</p> <p>23 Q. Okay. Mr. Patrick, this is one of</p> <p>24 the attachments that you attached to your</p> <p>25 e-mail, correct?</p>

<p>Page 78</p> <p>1 M. PATRICK</p> <p>2 A. Correct.</p> <p>3 Q. It's a redline of changes made to the</p> <p>4 original LLC agreement, correct?</p> <p>5 A. Correct.</p> <p>6 Q. Did you make these changes?</p> <p>7 A. I don't believe I was involved in the</p> <p>8 redline, of creating the redline.</p> <p>9 Q. But you reviewed them, right?</p> <p>10 A. Yes, I did review the redline.</p> <p>11 Q. Okay.</p> <p>12 MS. WINOGRAD: La Asia, can we scroll</p> <p>13 to PDF 38, which is page 10 of this</p> <p>14 redlined agreement.</p> <p>15 BY MS. WINOGRAD:</p> <p>16 Q. Okay. Do you see that the</p> <p>17 distributable cash for HCRE has changed from 51</p> <p>18 percent to 47.94 percent?</p> <p>19 A. Yes, I do.</p> <p>20 Q. Do you see that the distributable</p> <p>21 cash for Highland has changed from 49 percent</p> <p>22 to 46.06 percent?</p> <p>23 A. Wait, I think -- wait -- oh, correct.</p> <p>24 Yes, I do.</p> <p>25 Q. Okay. And these amended percentages</p>	<p>Page 79</p> <p>1 M. PATRICK</p> <p>2 for cash distributions were arrived at by</p> <p>3 reducing Highland's and HCRE's respective</p> <p>4 ownership interests by 6 percent, right?</p> <p>5 A. That would appear so, but I was not</p> <p>6 kind of involved in these -- the creation of</p> <p>7 these numbers or calculation of these numbers.</p> <p>8 Q. Okay. That 6 percent, though, to the</p> <p>9 best of your knowledge, based on this document,</p> <p>10 was allocated to BH Equities, correct?</p> <p>11 A. It would appear so.</p> <p>12 Q. Okay. The amendments to the cash</p> <p>13 distributions you refer to in your e-mail that</p> <p>14 we just talked about is referring to these</p> <p>15 changes we are looking at in Article 6.1(a),</p> <p>16 correct?</p> <p>17 A. Correct.</p> <p>18 Q. This isn't the only place the changes</p> <p>19 are made, is it?</p> <p>20 A. No, I don't think so.</p> <p>21 Q. Okay. Do you know who was</p> <p>22 responsible for making these changes?</p> <p>23 A. Like, actually drafting --</p> <p>24 Q. Yeah.</p> <p>25 A. -- the changes? No, I -- I don't</p>
<p>Page 80</p> <p>1 M. PATRICK</p> <p>2 recall. I just don't -- I just know I didn't</p> <p>3 do it.</p> <p>4 Q. Okay. And these -- like we just</p> <p>5 talked about, the same percentage adjustments</p> <p>6 are made throughout other sections of the</p> <p>7 document, aren't they?</p> <p>8 A. Pardon?</p> <p>9 Q. These same percentage adjustments are</p> <p>10 made throughout other sections of this</p> <p>11 document, aren't they?</p> <p>12 A. The same -- I don't know, you'd have</p> <p>13 to refresh my memory and show me the other</p> <p>14 percentages. I don't think they are the same</p> <p>15 percentages.</p> <p>16 Q. Okay.</p> <p>17 MS. WINOGRAD: Can we scroll to PDF</p> <p>18 page 47?</p> <p>19 BY MS. WINOGRAD:</p> <p>20 Q. Do you see Schedule A here?</p> <p>21 A. Yes, I do.</p> <p>22 Q. And do you see that under "Percentage</p> <p>23 Interest," do you see the same percentage</p> <p>24 adjustments made here that were made to</p> <p>25 distributions --</p>	<p>Page 81</p> <p>1 M. PATRICK</p> <p>2 A. Yes, I do see the same numbers on</p> <p>3 that Schedule A.</p> <p>4 Q. And these amended percentages were</p> <p>5 arrived at by reducing Highland's and HCRE's</p> <p>6 respective ownership interests in SE</p> <p>7 Multifamily by 6 percent, right?</p> <p>8 A. I'm -- ownership interest is not -- I</p> <p>9 don't believe is defined in this document. So,</p> <p>10 you know, I would answer no, because it's not</p> <p>11 defined in the documents. It's reducing the</p> <p>12 percentage interest in Schedule A.</p> <p>13 Q. Okay. So isn't percentage interest</p> <p>14 the same thing as ownership interest in SE</p> <p>15 Multifamily?</p> <p>16 A. I'd have to see --</p> <p>17 MS. DANDENEAU: Objection to form.</p> <p>18 A. I'd have to read --</p> <p>19 MS. DANDENEAU: Mr. Patrick, let</p> <p>20 me -- give me time to state my objections,</p> <p>21 please.</p> <p>22 Objection to form.</p> <p>23 A. I would have to read the definition,</p> <p>24 but I wouldn't -- if percentage interest in the</p> <p>25 definitions does not refer to ownership, I</p>

<p style="text-align: right;">Page 82</p> <p>1 M. PATRICK</p> <p>2 would call that conflation.</p> <p>3 BY MS. WINOGRAD:</p> <p>4 Q. Okay. But it says percentage</p> <p>5 interest, right?</p> <p>6 A. Yes.</p> <p>7 Q. And it's percentage interest in SE</p> <p>8 Multifamily, right?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And so these amended</p> <p>11 percentages --</p> <p>12 MS. DANDENEAU: Objection.</p> <p>13 Objection, misstates the document. I'm</p> <p>14 sorry for -- it does not in anywhere on</p> <p>15 the page I'm looking at say percentage</p> <p>16 interest in SE Multifamily.</p> <p>17 THE WITNESS: No.</p> <p>18 BY MS. WINOGRAD:</p> <p>19 Q. Okay. Mr. Patrick, do you have any</p> <p>20 reason to think that the percentage interests</p> <p>21 listed in Schedule A are anything other than</p> <p>22 the members' percentage interests in SE</p> <p>23 Multifamily?</p> <p>24 A. No.</p> <p>25 MS. DANDENEAU: Objection to form.</p>	<p style="text-align: right;">Page 83</p> <p>1 M. PATRICK</p> <p>2 BY MS. WINOGRAD:</p> <p>3 Q. Can you answer that again,</p> <p>4 Mr. Patrick?</p> <p>5 A. Yes. No, I do not.</p> <p>6 Q. Thank you. And these amended</p> <p>7 percentages under "Percentage Interest" were</p> <p>8 arrived at by reducing Highland's and HCRE's</p> <p>9 respective percentage interest in SE</p> <p>10 Multifamily by 6 percent, right?</p> <p>11 A. It would appear so.</p> <p>12 Q. Okay. And these -- these changes to</p> <p>13 the members' percentage interest are made in</p> <p>14 other places in this document, too, aren't</p> <p>15 they?</p> <p>16 A. Changes in the -- can you restate</p> <p>17 that question?</p> <p>18 Q. Sure. So why don't we go to --</p> <p>19 MS. WINOGRAD: La Asia, let's go to</p> <p>20 PDF page 31.</p> <p>21 BY MS. WINOGRAD:</p> <p>22 Q. Okay. Do you see Article 1.7?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. Do you see under Article 1.7,</p> <p>25 it says "Company Ownership"?</p>
<p style="text-align: right;">Page 84</p> <p>1 M. PATRICK</p> <p>2 A. Yes, I do.</p> <p>3 Q. Do you see these same percentages for</p> <p>4 company ownership that were made to the other</p> <p>5 provisions we just talked about in Schedule A</p> <p>6 and in distributable cash?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. And to confirm, these amended</p> <p>9 percentage ownerships of the members were</p> <p>10 arrived at simply by reducing Highland's and</p> <p>11 HCRE's respective ownership interests by</p> <p>12 6 percent, correct?</p> <p>13 A. Correct.</p> <p>14 Q. Okay. When you sent this e-mail out,</p> <p>15 you knew all these percentage changes were made</p> <p>16 throughout this document, right?</p> <p>17 A. Yes.</p> <p>18 Q. And when you sent this e-mail out,</p> <p>19 those changes are what you intended, correct?</p> <p>20 MS. DANDENEAU: Objection to form.</p> <p>21 BY MS. WINOGRAD:</p> <p>22 Q. You intended to make these changes?</p> <p>23 A. Yeah, I would -- you're saying these</p> <p>24 changes are what I intended. I did not intend</p> <p>25 one way or another. What I was trying to do,</p>	<p style="text-align: right;">Page 85</p> <p>1 M. PATRICK</p> <p>2 if you will, is just work with people that made</p> <p>3 these changes and distributed out to see -- to</p> <p>4 the larger group to see if this is consistent</p> <p>5 with the overall intent.</p> <p>6 Q. Okay. But you intended to send this</p> <p>7 document out, correct?</p> <p>8 A. I intended to send -- yes, I intended</p> <p>9 to send the document out for review and comment</p> <p>10 that these percentages were consistent with the</p> <p>11 overall intent.</p> <p>12 Q. Okay.</p> <p>13 MS. WINOGRAD: Could we go to PDF</p> <p>14 page 1 of the e-mail?</p> <p>15 BY MS. WINOGRAD:</p> <p>16 Q. Okay. All of the recipients of this</p> <p>17 e-mail were given the opportunity to look at</p> <p>18 the changes in your attached documents,</p> <p>19 correct?</p> <p>20 A. Correct.</p> <p>21 Q. Did any recipient of this e-mail ever</p> <p>22 tell you there was a mistake in the percentage</p> <p>23 changes that are set forth throughout the</p> <p>24 attachment in your e-mail?</p> <p>25 A. I do not recall.</p>

<p style="text-align: right;">Page 86</p> <p>1 M. PATRICK</p> <p>2 Q. Okay. At the time you sent the</p> <p>3 e-mail, did any of the recipients in this</p> <p>4 e-mail work for HCRE?</p> <p>5 A. I didn't -- I didn't have visibility</p> <p>6 as to who worked for HCRE.</p> <p>7 Q. Okay. But they all have Highland</p> <p>8 e-mail addresses, right?</p> <p>9 A. Yeah.</p> <p>10 Q. Does that indicate that they all</p> <p>11 worked for Highland?</p> <p>12 A. Look, again --</p> <p>13 MS. DANDENEAU: Objection, asked and</p> <p>14 answered -- objection, asked and answered.</p> <p>15 You asked him this question already.</p> <p>16 MS. WINOGRAD: I did not ask this</p> <p>17 specific question already.</p> <p>18 MS. DANDENEAU: You did. You asked</p> <p>19 him before who were -- he answered that he</p> <p>20 thought maybe Freddy Chang worked for</p> <p>21 HCRE.</p> <p>22 MS. WINOGRAD: I'm asking --</p> <p>23 MS. DANDENEAU: I'm just --</p> <p>24 MS. WINOGRAD: -- in this e-mail. I</p> <p>25 did not ask about the recipients on this</p>	<p style="text-align: right;">Page 87</p> <p>1 M. PATRICK</p> <p>2 e-mail. I'm going to move forward,</p> <p>3 though, because he already answered the</p> <p>4 question.</p> <p>5 MS. DANDENEAU: Okay, I'm sorry.</p> <p>6 Please answer -- okay.</p> <p>7 BY MS. WINOGRAD:</p> <p>8 Q. Mr. Patrick, prior to the execution</p> <p>9 of the amended LLC agreement, did anyone ever</p> <p>10 tell you that the percentage changes made</p> <p>11 throughout the attachment was -- were a</p> <p>12 mistake?</p> <p>13 A. I do not recall.</p> <p>14 Q. These percentage changes were</p> <p>15 accepted and adopted into the amended LLC</p> <p>16 agreement, correct?</p> <p>17 A. Correct.</p> <p>18 Q. Did anyone ever discuss the changes</p> <p>19 in these percentages before the amended LLC</p> <p>20 agreement was executed?</p> <p>21 MS. DANDENEAU: Objection to form.</p> <p>22 A. Wait. Restate the question one more</p> <p>23 time.</p> <p>24 BY MS. WINOGRAD:</p> <p>25 Q. Did anybody ever discuss the</p>
<p style="text-align: right;">Page 88</p> <p>1 M. PATRICK</p> <p>2 percentage changes in this document that we</p> <p>3 just went through before the amended LLC</p> <p>4 agreement was executed?</p> <p>5 MS. DANDENEAU: Objection to form.</p> <p>6 A. It's my understanding when Paul</p> <p>7 Broaddus was, I guess, working to include BH</p> <p>8 ownership in this transaction, he was</p> <p>9 discussing with them and others. I believe I</p> <p>10 was on vacation or out of pocket during that</p> <p>11 time period. So I -- you know, all I know is</p> <p>12 that Paul was interfacing with BH in discussing</p> <p>13 those percentages. I don't know who else</p> <p>14 internally he spoke to about the percentages.</p> <p>15 BY MS. WINOGRAD:</p> <p>16 Q. Okay. From your perspective, at the</p> <p>17 time you sent out this e-mail with this</p> <p>18 attachment, the percentages reflected the</p> <p>19 parties' intent.</p> <p>20 A. Correct.</p> <p>21 Q. Okay.</p> <p>22 A. Correct.</p> <p>23 Q. Otherwise, you would have said</p> <p>24 something, right?</p> <p>25 A. I'm sorry, otherwise what?</p>	<p style="text-align: right;">Page 89</p> <p>1 M. PATRICK</p> <p>2 Q. Otherwise you would have said</p> <p>3 something.</p> <p>4 A. I would have said something?</p> <p>5 MS. DANDENEAU: Objection, form.</p> <p>6 A. No --</p> <p>7 MS. DANDENEAU: Mr. Patrick, please</p> <p>8 give me time to lodge my objection.</p> <p>9 Objection to form. You can slow</p> <p>10 down.</p> <p>11 A. I was asked -- when I sent this</p> <p>12 e-mail out, it's essentially I'm asking the</p> <p>13 parties that are directed -- the "To" parties,</p> <p>14 you know, Tim Courmoyer, Freddy Chang, Dave</p> <p>15 Klos. I'm also directing it at Paul Broaddus,</p> <p>16 Matt McGraner, Rick Swadley, Frank Waterhouse</p> <p>17 to review the document and tell me does this</p> <p>18 reflect the intent. I'm not telling them this</p> <p>19 is the intent. I'm asking them to provide</p> <p>20 review to make sure it's consistent with the</p> <p>21 overall agreement, if you will, understanding</p> <p>22 of the agreement.</p> <p>23 BY MS. WINOGRAD:</p> <p>24 Q. And when you were trying to get that</p> <p>25 clear, nobody told you that it did not reflect</p>

<p>Page 90</p> <p>1 M. PATRICK</p> <p>2 the parties' intent, correct?</p> <p>3 A. I don't remember. I mean, for all I</p> <p>4 know, you could show me an e-mail with someone</p> <p>5 saying something. I just don't remember.</p> <p>6 Q. To the best of your knowledge today,</p> <p>7 nobody told you that there was a mistake in</p> <p>8 these percentages, correct?</p> <p>9 A. That is correct.</p> <p>10 Q. Okay.</p> <p>11 MS. WINOGRAD: Can we go to Exhibit</p> <p>12 18, please?</p> <p>13 BY MS. WINOGRAD:</p> <p>14 Q. Okay. Do you see this e-mail,</p> <p>15 Mr. Patrick?</p> <p>16 A. Yes, I do.</p> <p>17 Q. Did you write it?</p> <p>18 A. Yes, I did.</p> <p>19 Q. It's dated March 8th of 2019, right?</p> <p>20 A. Yes.</p> <p>21 Q. What's the subject?</p> <p>22 A. It says "Unicorn - LLC Agreement."</p> <p>23 Q. Okay. This relates to the amended</p> <p>24 LLC agreement, correct?</p> <p>25 A. Correct.</p>	<p>Page 91</p> <p>1 M. PATRICK</p> <p>2 Q. This e-mail is sent to Paul Broadus,</p> <p>3 correct?</p> <p>4 A. Correct.</p> <p>5 Q. And he was in the tax department at</p> <p>6 Highland, correct?</p> <p>7 A. Yes.</p> <p>8 Q. Do you see where you say, "Please</p> <p>9 have this signed while Shawn and I are out"?</p> <p>10 A. Yes.</p> <p>11 Q. Okay.</p> <p>12 MS. WINOGRAD: La Asia, can we scroll</p> <p>13 a little bit down to the attachment?</p> <p>14 BY MS. WINOGRAD:</p> <p>15 Q. Okay. And, Mr. Patrick, is this the</p> <p>16 attachment you were referring to in your</p> <p>17 e-mail?</p> <p>18 A. I believe so. Well, I --</p> <p>19 Q. When you said, "Please have this</p> <p>20 signed" --</p> <p>21 A. Yeah, yeah, yeah. I think so.</p> <p>22 THE REPORTER: Wait, wait, wait,</p> <p>23 wait. I didn't hear the question because</p> <p>24 there was overspeak.</p> <p>25</p>
<p>Page 92</p> <p>1 M. PATRICK</p> <p>2 BY MS. WINOGRAD:</p> <p>3 Q. When you said, "Please have this</p> <p>4 signed," were you referring to this document?</p> <p>5 I think you answered --</p> <p>6 A. Yeah, I'd have to kind of see the</p> <p>7 rest of the document. I'm a little unsure if</p> <p>8 this was the document that I was -- I wanted</p> <p>9 them to sign or the document that Paul would</p> <p>10 have to work with during the time period of my</p> <p>11 absence.</p> <p>12 Q. Okay. This is the attachment,</p> <p>13 though, you were referring to in your e-mail,</p> <p>14 when you were directing them to a document,</p> <p>15 correct?</p> <p>16 A. Yeah. If it's electronically</p> <p>17 attached to it, I would say yes.</p> <p>18 Q. Okay.</p> <p>19 MS. WINOGRAD: Can we scroll back up</p> <p>20 to the e-mail, please?</p> <p>21 BY MS. WINOGRAD:</p> <p>22 Q. In your e-mail you say, "The</p> <p>23 contribution schedule should reflect the equity</p> <p>24 capital from the debt bridge."</p> <p>25 Do you see that?</p>	<p>Page 93</p> <p>1 M. PATRICK</p> <p>2 A. Yes, I do.</p> <p>3 MS. WINOGRAD: And then could we</p> <p>4 scroll back to PDF page 20?</p> <p>5 BY MS. WINOGRAD:</p> <p>6 Q. Okay. Can you explain to me what you</p> <p>7 meant by that in terms of the capital</p> <p>8 contribution?</p> <p>9 MS. DANDENEAU: Objection to form.</p> <p>10 BY MS. WINOGRAD:</p> <p>11 Q. Well, let me rephrase it.</p> <p>12 A. Yeah.</p> <p>13 Q. The contribution schedule that you're</p> <p>14 referring to in your e-mail, are you referring</p> <p>15 to this "Capital Contribution" column on</p> <p>16 Schedule A that we're looking at?</p> <p>17 A. Yeah. I would -- I would believe so.</p> <p>18 Q. Okay. So is it fair to say you</p> <p>19 intended that column to be adjusted?</p> <p>20 A. Yes.</p> <p>21 MS. DANDENEAU: Objection to form.</p> <p>22 MS. WINOGRAD: And then can we go</p> <p>23 back up to the e-mail a little bit, just</p> <p>24 to the top one?</p> <p>25</p>

<p>Page 94</p> <p>1 M. PATRICK</p> <p>2 BY MS. WINOGRAD:</p> <p>3 Q. Do you see here where you say the</p> <p>4 percentage interests could remain?</p> <p>5 A. Yes.</p> <p>6 MS. WINOGRAD: La Asia, could we go</p> <p>7 back to PDF page 20?</p> <p>8 BY MS. WINOGRAD:</p> <p>9 Q. When you refer to the percentage</p> <p>10 interests in your e-mail, are you referring to</p> <p>11 the "Percentage Interest" column on Schedule A</p> <p>12 that we're looking at?</p> <p>13 A. I would believe so.</p> <p>14 Q. Okay. So when you sent this e-mail,</p> <p>15 you intended for these percentage interests in</p> <p>16 percentage interest -- in the "Percentage</p> <p>17 Interest" column to stay the same, right?</p> <p>18 MS. DANDENEAU: Objection to form.</p> <p>19 A. No, not necessarily. I think what I</p> <p>20 was indicating is that they don't have to</p> <p>21 adjust if the partners don't want them to</p> <p>22 adjust.</p> <p>23 BY MS. WINOGRAD:</p> <p>24 Q. Okay. Did you have an idea when you</p> <p>25 wrote this e-mail of whether the partners</p>	<p>Page 95</p> <p>1 M. PATRICK</p> <p>2 wanted them to adjust?</p> <p>3 A. I --</p> <p>4 MS. DANDENEAU: Objection to form.</p> <p>5 A. I did not.</p> <p>6 MS. DANDENEAU: Objection to form.</p> <p>7 Mr. Patrick, please give me time.</p> <p>8 BY MS. WINOGRAD:</p> <p>9 Q. Can you just explain, Mr. Patrick,</p> <p>10 what you meant by the percentage interest can</p> <p>11 remain the same? I'm just trying to</p> <p>12 understand.</p> <p>13 A. Yeah. I think what I am doing is</p> <p>14 educating the group about the flexibility with</p> <p>15 respect to these LLC agreements, that the</p> <p>16 amount of capital contributed may not</p> <p>17 necessarily have to adjust the percentage,</p> <p>18 although they can frequently.</p> <p>19 You know, so all I'm indicating is</p> <p>20 there is flexibility as to what the partners</p> <p>21 want to do.</p> <p>22 Q. Okay. But you directed them to</p> <p>23 change the capital contribution, right?</p> <p>24 MS. DANDENEAU: Objection to form.</p> <p>25 A. Yes. From -- yes.</p>
<p>Page 96</p> <p>1 M. PATRICK</p> <p>2 BY MS. WINOGRAD:</p> <p>3 Q. Okay. So then why did -- why did you</p> <p>4 say, then, the percentage interest can remain</p> <p>5 the same?</p> <p>6 A. Because the capital contribution and</p> <p>7 the percentage interest don't necessarily have</p> <p>8 to adjust vis-a-vis the partners' committed or</p> <p>9 contributed capital. That's the flexibility of</p> <p>10 partnership agreements.</p> <p>11 Q. Did anyone ever tell you the</p> <p>12 percentage interests should be adjusted?</p> <p>13 A. I do not recall.</p> <p>14 MS. WINOGRAD: Okay. Let's take a</p> <p>15 five-minute break. It is 10:56. Let's</p> <p>16 actually come back at 11:05, if that works</p> <p>17 for everybody.</p> <p>18 MS. DANDENEAU: That's fine.</p> <p>19 (Recess taken 9:56 a.m. Central Time</p> <p>20 - 10:05 a.m. Central Time.)</p> <p>21 MS. WINOGRAD: La Asia, can we go</p> <p>22 back to the document we were just on,</p> <p>23 which I believe was Exhibit 18 and PDF</p> <p>24 page 20?</p> <p>25</p>	<p>Page 97</p> <p>1 M. PATRICK</p> <p>2 BY MS. WINOGRAD:</p> <p>3 Q. Okay. Mr. Patrick, just going back</p> <p>4 to something you were explaining before, I want</p> <p>5 to make sure I understood you correctly.</p> <p>6 From your perspective, the percentage</p> <p>7 interests on Schedule A don't necessarily have</p> <p>8 to correspond to the capital contribution,</p> <p>9 correct?</p> <p>10 A. Correct.</p> <p>11 Q. It can be whatever the members decide</p> <p>12 even if it's not consistent with the capital</p> <p>13 contribution, correct?</p> <p>14 A. Correct.</p> <p>15 Q. And at the time you sent out this</p> <p>16 document, was it your understanding that these</p> <p>17 percentage interests were what the members</p> <p>18 decided at the time?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. Okay. So prior to the time</p> <p>21 the amended LLC agreement was executed, did</p> <p>22 anyone ever tell you the percentage interests</p> <p>23 were wrong?</p> <p>24 A. No.</p> <p>25 Q. Did anyone ever tell you that there</p>

<p>Page 98</p> <p>1 M. PATRICK</p> <p>2 was a mistake with respect to any of the</p> <p>3 percentages that we see here on Schedule A?</p> <p>4 A. No.</p> <p>5 Q. To the best of your knowledge, did</p> <p>6 the parties ever amend Schedule A to change the</p> <p>7 percentage interests?</p> <p>8 MS. DANDENEAU: Objection to form.</p> <p>9 A. I --</p> <p>10 MS. DANDENEAU: Are you referring</p> <p>11 to -- are you referring to --</p> <p>12 Ms. Winograd, are you referring to</p> <p>13 Schedule A as on the amended LLC</p> <p>14 agreement?</p> <p>15 MS. WINOGRAD: Exactly. I'm</p> <p>16 referring to the one we're looking at</p> <p>17 right now that was -- that Mr. Patrick</p> <p>18 testified was adopted and accepted into</p> <p>19 the amended LLC agreement.</p> <p>20 A. My understanding is the last</p> <p>21 amendment to the LLC agreement was the</p> <p>22 amendment executed on March 15th, 2019.</p> <p>23 BY MS. WINOGRAD:</p> <p>24 Q. Right. But did the -- to the best of</p> <p>25 your knowledge, did the parties ever amend the</p>	<p>Page 99</p> <p>1 M. PATRICK</p> <p>2 amended LLC agreement?</p> <p>3 A. To the best of my knowledge, the</p> <p>4 parties have not made an amendment after March</p> <p>5 15th, 2019 to the LLC agreement.</p> <p>6 Q. Okay.</p> <p>7 MS. WINOGRAD: Okay. La Asia, could</p> <p>8 we show Exhibit 28?</p> <p>9 (Exhibit 28 displayed and to be</p> <p>10 marked.)</p> <p>11 BY MS. WINOGRAD:</p> <p>12 Q. Okay. Do you see this e-mail,</p> <p>13 Mr. Patrick?</p> <p>14 A. Yes, I do.</p> <p>15 Q. You were a recipient, correct?</p> <p>16 A. Yes, it appears so.</p> <p>17 Q. It's dated March 16th, 2019, correct?</p> <p>18 A. Correct.</p> <p>19 Q. This is the day after the amended LLC</p> <p>20 agreement was executed, correct?</p> <p>21 A. Yes.</p> <p>22 Q. It's from Freddy Chang, correct?</p> <p>23 A. Correct.</p> <p>24 Q. And it's sent to Paul Broaddus and</p> <p>25 Ben Roby, correct?</p>
<p>Page 100</p> <p>1 M. PATRICK</p> <p>2 A. Correct.</p> <p>3 Q. And it's cc'd to a number of</p> <p>4 individuals at both Highland and BH Equities,</p> <p>5 correct?</p> <p>6 A. It appears so.</p> <p>7 Q. Okay. So Freddy Chang says the fully</p> <p>8 executed LLCA is attached.</p> <p>9 Do you see that?</p> <p>10 A. Yes, I do.</p> <p>11 Q. He's referring to the amended LLC</p> <p>12 agreement, correct?</p> <p>13 A. It appears so.</p> <p>14 Q. Okay.</p> <p>15 MS. WINOGRAD: And can you scroll</p> <p>16 down a little, La Asia? Up just a little</p> <p>17 bit to show the attachment.</p> <p>18 BY MS. WINOGRAD:</p> <p>19 Q. Okay. So this is the amended LLC --</p> <p>20 the fully executed amended LLC agreement was</p> <p>21 circulated the day after execution, correct?</p> <p>22 A. It appears so, yes.</p> <p>23 Q. Do you know if anyone that was a</p> <p>24 recipient of this e-mail ever said that any</p> <p>25 part of the amended LLC agreement was a</p>	<p>Page 101</p> <p>1 M. PATRICK</p> <p>2 mistake?</p> <p>3 A. I have no knowledge whether or not.</p> <p>4 Q. Did anybody ever tell -- so let me</p> <p>5 rephrase that.</p> <p>6 So to confirm, nobody ever told you</p> <p>7 that, correct?</p> <p>8 A. That is correct.</p> <p>9 Q. Okay. Okay. So moving on, are you</p> <p>10 familiar with the firm Barker Viggato, LLP?</p> <p>11 A. That name is not coming to my</p> <p>12 recollection.</p> <p>13 Q. Okay. Are you aware that a firm</p> <p>14 prepares SE Multifamily's tax returns?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. But you don't know if that's</p> <p>17 Barker Viggato, correct?</p> <p>18 A. That is correct.</p> <p>19 Q. Okay. Have you ever communicated</p> <p>20 with anyone at the firm that prepares SE</p> <p>21 Multifamily's tax returns?</p> <p>22 A. I do not recall.</p> <p>23 Q. Okay. Is it your understanding that</p> <p>24 the manager of SE Multifamily is responsible</p> <p>25 for communicating with the firm -- with the</p>

<p>Page 102</p> <p>1 M. PATRICK</p> <p>2 preparer of their tax returns?</p> <p>3 A. I don't -- I don't recall what is</p> <p>4 provided with respect to that.</p> <p>5 Q. Well, are you -- are you -- do you</p> <p>6 know if any particular person at SE Multifamily</p> <p>7 was responsible for making sure that the firm</p> <p>8 that prepares its taxes received all relevant</p> <p>9 information relating to SE Multifamily's taxes?</p> <p>10 A. I just don't recall.</p> <p>11 Q. Okay. Do you know if -- do you know</p> <p>12 if SE Multifamily's taxes -- tax returns were</p> <p>13 ever amended?</p> <p>14 A. I do not know one way or the other.</p> <p>15 Q. Do you know if there was ever a</p> <p>16 mistake in SE Multifamily's tax returns?</p> <p>17 A. Not to my knowledge.</p> <p>18 Q. Okay.</p> <p>19 MS. WINOGRAD: La Asia, can we show</p> <p>20 Exhibit 5?</p> <p>21 (Exhibit 5 displayed and to be</p> <p>22 marked.)</p> <p>23 BY MS. WINOGRAD:</p> <p>24 Q. Okay. One more question. Did you</p> <p>25 ever discuss with anyone a possible amendment</p>	<p>Page 103</p> <p>1 M. PATRICK</p> <p>2 to SE Multifamily's tax returns?</p> <p>3 A. Not that I can recall.</p> <p>4 Q. Did you ever recommend to anyone that</p> <p>5 SE Multifamily's tax returns be amended?</p> <p>6 A. Not that I can recall.</p> <p>7 Q. Did you ever hear any suggestion that</p> <p>8 they should be amended?</p> <p>9 A. Just not that I can recall.</p> <p>10 Q. Okay. So looking at Exhibit 5 here,</p> <p>11 have you seen this document before? And if you</p> <p>12 need us to scroll down or up, we can.</p> <p>13 A. Yes.</p> <p>14 Q. You have seen it before?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. This is a proof of claim filed</p> <p>17 by HCRE in the Highland bankruptcy, correct?</p> <p>18 A. It appears so.</p> <p>19 MS. WINOGRAD: Can we scroll up a</p> <p>20 little bit to the date?</p> <p>21 BY MS. WINOGRAD:</p> <p>22 Q. And it's dated April 8th of 2020,</p> <p>23 correct?</p> <p>24 A. That's what the -- that's what the</p> <p>25 document shows, correct.</p>
<p>Page 104</p> <p>1 M. PATRICK</p> <p>2 Q. Okay.</p> <p>3 MS. WINOGRAD: So can we go down to</p> <p>4 PDF page 5, which is Exhibit A to the</p> <p>5 document?</p> <p>6 BY MS. WINOGRAD:</p> <p>7 Q. Okay. If you look at the third</p> <p>8 sentence here, it says, "Claimant contends that</p> <p>9 all or a portion of debtor's equity, ownership,</p> <p>10 economic rights, equitable or beneficial</p> <p>11 interests in SE Multifamily does" -- and there</p> <p>12 should probably be a 'not' there, 'does not,'</p> <p>13 it looks like a typo -- does not belong to the</p> <p>14 debtor or may be the property of claimant."</p> <p>15 So this is a proof of claim filed by</p> <p>16 HCRE in which it alleges that there is a</p> <p>17 mistake in Highland's equity in SE Multifamily,</p> <p>18 correct?</p> <p>19 A. Where is the word "mistake"?</p> <p>20 Q. Well, let me ask it this way. Did</p> <p>21 you -- so strike that question. Let me</p> <p>22 rephrase it.</p> <p>23 Did you have any involvement in</p> <p>24 preparing this?</p> <p>25 A. No.</p>	<p>Page 105</p> <p>1 M. PATRICK</p> <p>2 Q. Have you seen this before today?</p> <p>3 A. I saw it for the first time</p> <p>4 yesterday.</p> <p>5 Q. Okay. Did you ever discuss this with</p> <p>6 anyone before yesterday?</p> <p>7 A. No.</p> <p>8 Q. Do you know who prepared this?</p> <p>9 A. It's come to my understanding</p> <p>10 yesterday, the law firm of Bonds Ellis.</p> <p>11 MS. WINOGRAD: Okay. I just want to</p> <p>12 take three minutes to figure out if I'm</p> <p>13 done or close to being done, so I will be</p> <p>14 back at 11 -- just in three minutes,</p> <p>15 11:19.</p> <p>16 MS. DANDENEAU: Okay. Thank you,</p> <p>17 Hayley. We'll stay on the line.</p> <p>18 (Recess taken 10:16 a.m. Central Time</p> <p>19 - 10:19 a.m. Central Time.)</p> <p>20 BY MS. WINOGRAD:</p> <p>21 Q. So I just want to go back to</p> <p>22 something we discussed at the beginning of the</p> <p>23 deposition, and I want to just understand it</p> <p>24 more. You mentioned earlier that you believed</p> <p>25 that Tim Coumoyer and Freddy Chang were</p>

<p>Page 106</p> <p>1 M. PATRICK</p> <p>2 looking out for Highland's interests in</p> <p>3 relation to the amended LLC agreement while it</p> <p>4 was being drafted, correct?</p> <p>5 A. I would say that they were looking --</p> <p>6 in their review, that they were reviewing the</p> <p>7 document with respect that it reflected the</p> <p>8 overall agreement of the parties.</p> <p>9 BY MS. WINOGRAD:</p> <p>10 Q. Okay. So they were looking out for</p> <p>11 the interests of the joint venture of SE</p> <p>12 Multifamily, then, correct?</p> <p>13 MS. DANDENEAU: Objection to form.</p> <p>14 A. What do you mean by "looking out"?</p> <p>15 BY MS. WINOGRAD:</p> <p>16 Q. Making sure that the amended LLC</p> <p>17 agreement reflected Highland's intent.</p> <p>18 A. I would agree with that.</p> <p>19 Q. You would agree with what exactly?</p> <p>20 A. That part of the responsibility was</p> <p>21 to make sure that it reflected the overall</p> <p>22 intent of the joint venture.</p> <p>23 Q. Okay. So it's your understanding</p> <p>24 that they were working on behalf of the joint</p> <p>25 venture, correct?</p>	<p>Page 107</p> <p>1 M. PATRICK</p> <p>2 A. On behalf of the joint venture, yes.</p> <p>3 Q. Okay. And you had mentioned that</p> <p>4 there was a real estate group that was looking</p> <p>5 out for HCRE's interests, meaning that they</p> <p>6 were looking out to make sure that the amended</p> <p>7 LLC agreement reflected HCRE's intent, correct?</p> <p>8 A. I think -- like the legal team, I</p> <p>9 think they were reviewing this document to make</p> <p>10 sure that it reflected the overall business</p> <p>11 arrangement of the joint venture.</p> <p>12 Q. Okay. Do you know if there was any</p> <p>13 lawyer who was looking out solely for HCRE's</p> <p>14 interest in relation to the amended LLC</p> <p>15 agreement?</p> <p>16 A. Again, Hunton & Williams, when they</p> <p>17 were asked to draft this document, I think,</p> <p>18 again, they were -- as any good lawyer, just</p> <p>19 wanted to make sure it's reflective of the two</p> <p>20 partners' agreement.</p> <p>21 Q. Okay. So -- so they were looking out</p> <p>22 for the joint venture the way you were</p> <p>23 describing before, correct?</p> <p>24 A. They were -- they were in this</p> <p>25 situation invariably making sure that the LLC</p>
<p>Page 108</p> <p>1 M. PATRICK</p> <p>2 agreement reflects both parties, both parties'</p> <p>3 overall agreement.</p> <p>4 Q. Okay. Both parties' agreement</p> <p>5 meaning the agreement -- so both -- let me --</p> <p>6 let me -- you know, I think that I have what I</p> <p>7 need. I don't think I have any more questions</p> <p>8 on this.</p> <p>9 I just want to clear up, when we say</p> <p>10 the agreement, we mean the amended LLC</p> <p>11 agreement, right?</p> <p>12 A. And the original.</p> <p>13 Q. And the original. Okay.</p> <p>14 MS. WINOGRAD: All right.</p> <p>15 Mr. Patrick, I'm done with my questioning.</p> <p>16 Thank you very much for being here today.</p> <p>17 I really appreciate it.</p> <p>18 THE WITNESS: You're welcome.</p> <p>19 MS. DANDENEAU: Did Mr. Gameros -- I</p> <p>20 just want to make clear, is Mr. Patrick</p> <p>21 dismissed? Is there any further</p> <p>22 questioning.</p> <p>23 MR. GAMEROS: I was going to say,</p> <p>24 NexPoint Real Estate Partners reserves our</p> <p>25 questions, if any, until the time of</p>	<p>Page 109</p> <p>1 M. PATRICK</p> <p>2 trial.</p> <p>3 Thank you for your time today,</p> <p>4 Mr. Patrick.</p> <p>5 THE WITNESS: You're welcome.</p> <p>6 MS. DANDENEAU: All right. Thank</p> <p>7 you.</p> <p>8 THE REPORTER: Before everyone</p> <p>9 leaves, could I just get orders from</p> <p>10 everyone? I have a standing order, I</p> <p>11 think, from you, Ms. Winograd.</p> <p>12 MS. DANDENEAU: I assume that</p> <p>13 somebody will send us a transcript if they</p> <p>14 want Mr. Patrick to review it. I mean, I</p> <p>15 don't otherwise need a copy.</p> <p>16 THE REPORTER: Okay. Mr. Gameros?</p> <p>17 MR. GAMEROS: I'll take a copy, a</p> <p>18 condensed. We don't need the exhibits.</p> <p>19 I've already got those.</p> <p>20 THE REPORTER: Okay.</p> <p>21 (Time noted: 10:24 a.m.)</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

<p style="text-align: right;">Page 110</p> <p>1 2 IN THE UNITED STATES BANKRUPTCY COURT 3 FOR THE NORTHERN DISTRICT OF TEXAS 4 DALLAS DIVISION 5 IN RE:) 6) CHAPTER 11 7 HIGHLAND CAPITAL) 8 MANAGEMENT, L.P.,) CASE NO. 19-34054-SGJ11 9) 10 Reorganized Debtor.) 11) 12) 13 HIGHLAND CAPITAL) 14 MANAGEMENT, L.P.,) 15) 16 Plaintiff,) ADVERSARY PROCEEDING 17) 18 VS.) NO. 21-03000-SGJ 19) 20 HIGHLAND CAPITAL) 21 MANAGEMENT FUND ADVISORS,) 22 L.P., NEXPOINT ADVISORS,) 23 L.P., HIGHLAND INCOME) 24 FUND, NEXPOINT STRATEGIC) 25 OPPORTUNITIES FUND,) NEXPOINT CAPITAL, INC.,) AND CLO HOLDCO, LTD.,) Defendants.) REPORTER'S CERTIFICATION MARK PATRICK AUGUST 2, 2022 I, Janice K. McMoran, RDR, CRR, TCCR, and Certified Shorthand Reporter in and for the</p>	<p style="text-align: right;">Page 111</p> <p>1 2 State of Texas, hereby certify to the following: 3 That the witness, MARK PATRICK, was duly 4 remotely sworn by the officer, and that the 5 transcript of the oral deposition is a true record 6 of the testimony given by the witness; 7 I further certify that pursuant to 8 Federal Rules of Civil Procedure, Rule 30(e)(1)(A) 9 and (B) as well as Rule 30(e)(2), that review of 10 the transcript and signature of the deponent: 11 ___X___ was requested by the deponent or 12 a party before the completion of the deposition and 13 is to be returned within 30 days from date of 14 receipt of the transcript if returned, the 15 attached Errata contains any changes and the 16 reasons therefor; 17 _____ was not requested by the deponent 18 or a party before the completion of the deposition. 19 I further certify that I am neither 20 counsel for, related to, nor employed by any of the 21 parties or attorneys to the action in which this 22 proceeding was taken. Further, I am not a 23 relative or employee of any attorney of record in 24 this cause, nor am I financially or otherwise 25 interested in the outcome of the action.</p>
<p style="text-align: right;">Page 112</p> <p>1 2 Subscribed and sworn to on this the 2nd 3 day of August, 2022. 4 5 6 _____ 7 JANICE K. McMORAN, RDR, CRR, TCCR 8 Texas CSR #1959 9 Expiration Date: 2/28/23 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 113</p> <p>1 ACKNOWLEDGMENT OF DEPONENT 2 3 I, MARK PATRICK, do hereby certify that I 4 have read the foregoing pages, and that the same is 5 a correct transcription of the answers given by me 6 to the questions therein propounded, except for the 7 corrections or changes in form or substance, if 8 any, noted in the attached Errata Sheet. 9 10 11 _____ 12 MARK PATRICK DATE 13 14 15 16 17 18 19 20 21 22 23 24 25</p>

<p>1 ERRATA SHEET</p> <p>2 Case Name:</p> <p>3 Deposition Date:</p> <p>4 Deponent:</p> <table border="1"><thead><tr><th>5 Pg.</th><th>No.</th><th>Now Reads</th><th>Should Read</th><th>Reason</th></tr></thead><tbody><tr><td>6</td><td>___</td><td>___</td><td>___</td><td>___</td></tr><tr><td>7</td><td>___</td><td>___</td><td>___</td><td>___</td></tr><tr><td>8</td><td>___</td><td>___</td><td>___</td><td>___</td></tr><tr><td>9</td><td>___</td><td>___</td><td>___</td><td>___</td></tr><tr><td>10</td><td>___</td><td>___</td><td>___</td><td>___</td></tr><tr><td>11</td><td>___</td><td>___</td><td>___</td><td>___</td></tr><tr><td>12</td><td>___</td><td>___</td><td>___</td><td>___</td></tr><tr><td>13</td><td>___</td><td>___</td><td>___</td><td>___</td></tr><tr><td>14</td><td>___</td><td>___</td><td>___</td><td>___</td></tr><tr><td>15</td><td>___</td><td>___</td><td>___</td><td>___</td></tr><tr><td>16</td><td>___</td><td>___</td><td>___</td><td>___</td></tr><tr><td>17</td><td>___</td><td>___</td><td>___</td><td>___</td></tr><tr><td>18</td><td>___</td><td>___</td><td>___</td><td>___</td></tr><tr><td>19</td><td>___</td><td>___</td><td>___</td><td>___</td></tr><tr><td>20</td><td colspan="4"></td></tr><tr><td>21</td><td colspan="4">_____</td></tr><tr><td>22</td><td colspan="4">Signature of Deponent</td></tr><tr><td colspan="5">SUBSCRIBED AND SWORN BEFORE ME</td></tr><tr><td>23</td><td colspan="4">THIS ____ DAY OF _____, 2022.</td></tr><tr><td>24</td><td colspan="4">_____</td></tr><tr><td>25</td><td colspan="4">(Notary Public) MY COMMISSION EXPIRES: _____</td></tr></tbody></table>	5 Pg.	No.	Now Reads	Should Read	Reason	6	___	___	___	___	7	___	___	___	___	8	___	___	___	___	9	___	___	___	___	10	___	___	___	___	11	___	___	___	___	12	___	___	___	___	13	___	___	___	___	14	___	___	___	___	15	___	___	___	___	16	___	___	___	___	17	___	___	___	___	18	___	___	___	___	19	___	___	___	___	20					21	_____				22	Signature of Deponent				SUBSCRIBED AND SWORN BEFORE ME					23	THIS ____ DAY OF _____, 2022.				24	_____				25	(Notary Public) MY COMMISSION EXPIRES: _____				
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